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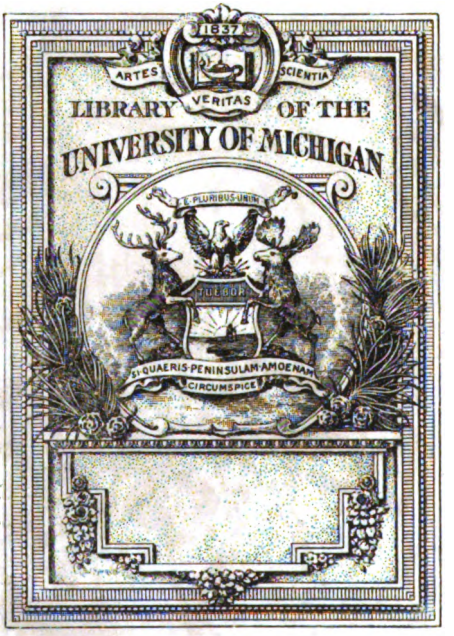

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~~PART IX.~~

CONTAINING

DEFENCE OF USURY.
MANUAL OF POLITICAL ECONOMY.
A PLAN FOR THE CONVERSION OF STOCK INTO NOTE ANNUITIES.
ON THE RESTRICTIVE AND PROHIBITORY COMMERCIAL SYSTEM.
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DEFENCE OF USURY;

SHOWING THE IMPOLICY OF

THE PRESENT LEGAL RESTRAINTS

ON THE TERMS OF

PECUNIARY BARGAINS;

IN

LETTERS TO A FRIEND.

TO WHICH IS ADDED,

A LETTER TO ADAM SMITH, ESQ. LL.D.

ON THE

DISCOURAGEMENTS OPPOSED BY THE ABOVE RESTRAINTS
TO THE PROGRESS OF INVENTIVE INDUSTRY.

BY

JEREMY BENTHAM.

(ORIGINALLY PRINTED IN 1816.)

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*** The following alterations have been made on the Usury Laws, since the Defence of Usury was published. By 5 & 6 W. IV. c. 41 (31st August 1834,) intituled, "An Act to amend the law relating to securities given for considerations arising out of gaming, usurious, and certain other illegal transactions," documents arising from usurious transactions are no longer null, but are in the same situation with obligations arising from other illegal transactions; *i. e.* they are effectual in the hands of *bonâ fide* holders, who have given value for them, but not in the hands of those who have obtained them through the usurious transaction. The obligor having been compelled to pay the contents of the obligation, has recourse against the usurious obligee, as for money paid on his account. By section 7 of the act for the renewal of the Charter of the Bank of England, (3 & 4 W. IV. c. 98,) bills at three months, or having no more than three months to run, are exempt from the Usury Laws; and by 7 W. IV. and 1 Vict. c. 80 (17th July 1837,) the exemption is extended to bills at twelve months, or only having that time to run. This act is temporary, granting the privilege only to 1st January 1840.

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DEFENCE OF USURY.

LETTER I.

INTRODUCTION.

Crichoff, in White Russia,
January 1787.

AMONG the various species or modifications of liberty, of which, on different occasions, we have heard so much in England, I do not recollect ever seeing anything yet offered in behalf of the *liberty of making one's own terms in money-bargains*. From so general and universal a neglect, it is an old notion of mine, as you well know, that this meek and unassuming species of liberty has been suffering much injustice.

A fancy has taken me, just now, to trouble you with my reasons: which, if you think them capable of answering any good purpose, you may forward to the press: or in the other case, what will give you less trouble, to the fire.

In a word, the proposition I have been accustomed to lay down to myself on this subject is the following one, viz. that *no man of ripe years and of sound mind, acting freely, and with his eyes open, ought to be hindered, with a view to his advantage, from making such bargain, in the way of obtaining money, as he thinks fit: nor* (what is a necessary consequence) *anybody hindered from supplying him, upon any terms he thinks proper to accede to.*

This proposition, were it to be received, would level, you see, at one stroke, all the barriers which law, either statute or common, have in their united wisdom set up, either against the crying sin of Usury, or against the hard-named and little-heard-of practice of Champerty; to which we must also add a portion of the multifarious, and as little-heard-of offence, of Maintenance.

On this occasion, were it any individual antagonist I had to deal with, my part would be a smooth and easy one. "You, who fetter contracts—you, who lay restrains on the liberty of man, it is for you," I should say, "to assign a reason for your doing so." That contracts in general ought to be observed, is a rule, the propriety of which, no man was ever yet found wrong-headed enough to deny: if this case is one of the exceptions (for some doubtless there are) which the safety and welfare of every society require should be taken out of that general rule, in this case, as in all those others, it lies upon him, who alleges the necessity of the exception, to produce a reason for it.

This, I say, would be a short and very easy method with an individual: but, as the world has no mouth of its own to plead by, no certain attorney by which it can "come and defend this force and injury," I must even find arguments for it at a venture, and ransack my own imagination for such phantoms as I can find to fight with.

In favour of the restraints opposed to the species of liberty I contend for, I can imagine but five arguments:—

1. Prevention of usury.
2. Prevention of prodigality.
3. Protection of indigence against extortion.
4. Repression of the temerity of projectors.
5. Protection of simplicity against imposition.—

Of all these in their order.

LETTER II.

REASONS FOR RESTRAINT — PREVENTION OF USURY.

I WILL begin with the *prevention* of *usury*: because in the sound of the word *usury* lies, I take it, the main strength of the argument: or, to speak strictly, of what is of more importance than all argument, of the hold which the opinion I am combating has obtained on the imaginations and passions of mankind.

Usury is a bad thing, and as such ought to be prevented: usurers are a bad sort of men, a very bad sort of men, and as such ought to be punished and suppressed. These are among the string of propositions which every man finds handed down to him from his progenitors—which most men are disposed to accede to without examination; and indeed not unnaturally nor even unreasonably disposed, for it is impossible that the bulk of mankind should find leisure, had they the ability, to examine into the grounds of an hundredth part of the rules and maxims which they find themselves obliged to act upon. Very good apology this for John Trot: but a little more inquisitiveness may be required of legislators.

You, my friend, by whom the true force of words is so well understood, have, I am sure, gone before me in perceiving, that to say usury is a thing to be prevented, is neither

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more nor less than begging the matter in question. I know of but two definitions that can possibly be given of usury. One is, the taking of a greater interest than the law allows of: this may be styled the *political* or *legal* definition. The other is, the taking of a greater interest than it is usual for men to give and take: this may be styled the *moral* one: and this, where the law has not interfered, is plainly enough the only one. It is plain, that in order for usury to be prohibited by law, a positive description must have been found for it by law, fixing, or rather superseding, the moral one. To say, then, that usury is a thing that ought to be prevented, is saying neither more nor less than that the utmost rate of interest which shall be taken ought to be fixed, and that fixation enforced by penalties, or such other means, if any, as may answer the purpose of preventing the breach of it. A law punishing usury supposes, therefore, a law fixing the allowed legal rate of interest: and the propriety of the penal law must depend upon the propriety of the simply-prohibitive, or, if you please, declaratory one.

One thing, then, is plain: that, antecedently to custom growing from convention, there can be no such thing as usury; for what rate of interest is there that can naturally be more proper than another? what natural fixed price can there be for the use of money, more than for the use of any other thing? Were it not, then, for custom, usury, considered in a moral view, would not so much as admit of a definition: so far from having existence, it would not so much as be conceivable; nor, therefore, could the law, in the definition it took upon itself to give of such offence, have so much as a guide to steer by. Custom, therefore, is the sole basis, which either the moralist in his rules and precepts, or the legislator in his injunctions, can have to build upon. But what basis can be more weak or unwarrantable, as a ground for coercive measures, than custom resulting from free choice? My neighbours, being at liberty, have happened to concur among themselves in dealing at a certain rate of interest. I, who have money to lend, and Titius, who wants to borrow it of me, would be glad, the one of us to accept, the other to give, an interest somewhat higher than theirs: why is the liberty they exercise to be made a pretence for depriving me and Titius of ours?

Nor has blind custom, thus made the sole and arbitrary guide, anything of steadiness or uniformity in its decisions: it has varied, from age to age, in the same country — it varies, from country to country, in the same age, and the legal rate has varied along with it; indeed, with regard to times past, it is from the legal rate, more readily than from any other source, that we collect the customary Among the Romans, till the time of Justinian, we find it as high as 12 per cent.: in England, so late as the time of Henry VIII., we find it at 10 per cent.: succeeding statutes reduced it to 8, then to 6, and lastly to 5, where it stands at present. Even at present, in Ireland it is at 6 per cent., and in the West Indies at 8 per cent.; and in Hindostan, where there is no rate limited by law, the lowest customary rate is 10 or 12. At Constantinople, in certain cases, as I have been well informed, 30 per cent. is a common rate. Now, of all these widely different rates, what one is there, that is intrinsically more proper than another? What is it that evidences this propriety in each instance? — what but the mutual convenience of the parties, as manifested by their consent? It is convenience, then, that has produced whatever there has been of custom in the matter: what can there, then, be in custom, to make it a better guide than the convenience which gave it birth? and what is there in convenience, that should make it a worse guide in one case than in another? It would be convenient to me to give six per cent. for money: I wish to do so. "No," says the law — "you shan't." Why so? "Because it is not convenient to your neighbour to give above five for it." Can anything be more absurd than such a reason?

Much has not been done, I think, by legislators as yet, in the way of fixing the price of other commodities: and, in what little has been done, the probity of the intention has, I believe, in general, been rather more unquestionable than the rectitude of the principle, or the felicity of the result. Putting money out at interest, is exchanging present money for future: but why a policy, which as applied to exchanges in general would be generally deemed absurd and mischievous, should be deemed necessary in the instance of this particular kind of exchange, mankind are as yet to learn. For him who takes as much as he can get for the use of any other sort of thing, a house for instance, there is no particular appellation, nor any mark of disrepute: nobody is ashamed of doing so, nor is it usual so much as to profess to do otherwise. Why a man who takes as much as he can get, be it six, or seven, or eight, or ten per cent. for the use of a sum of money, should be called usurer, should be loaded with an opprobrious name, any more than if he had bought a house with it, and made a proportionable profit by the house, is more than I can see.

Another thing I would also wish to learn, is, why the legislator should be more anxious to limit the rate of interest one way, than the other? why he should set his face against the owners of that species of property more than of any other? why he should make it his business to prevent their getting *more* than a certain price for the use of it, rather

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than to prevent their getting *less?* why, in short, he should not take means for making it penal to offer less, for example, than five per cent., as well as to accept more? Let any one that can, find an answer to these questions: it is more than I can do: I except always the distant and imperceptible advantage, of sinking the price of goods of all kinds, and in that remote way multiplying the future enjoyments of individuals. But this was a consideration by far too distant and refined, to have been the original ground for confining the limitation to this side.

LETTER III.

REASONS FOR RESTRAINT—PREVENTION OF PRODIGALITY.

HAVING done with sounds, I come gladly to propositions; which, as far as they are true in point of fact, may deserve the name of reasons. And first, as to the efficacy of such restrictive laws with regard to the *prevention of prodigality*.

That prodigality is a bad thing, and that the prevention of it is a proper object for the legislator to propose to himself, so long as he confines himself to (what I look upon as) proper measures, I have no objection to allow, at least for the purpose of the argument; though, were this the principal question, I should look upon it as incumbent on me to place in a fair light the reasons there may be for doubting how far, with regard to a person arrived at the age of discretion, third persons may be competent judges which of two pains may be of greater force and value to him—the present pain of restraining his present desires, or the future contingent pain he may be exposed to suffer from the want to which the expense of gratifying these desires may hereafter have reduced him. To prevent our doing mischief to one another, it is but too necessary to put bridles into all our mouths—it is necessary to the tranquillity and very being of society: but that the tacking of leading-strings upon the backs of grown persons, in order to prevent their doing themselves a mischief, is not necessary either to the being or tranquillity of society, however conducive to its well-being, I think cannot be disputed. Such paternal, or, if you please, maternal, care, may be a good work, but it certainly is but a work of supererogation.

For my own part, I must confess, that so long as such methods only are employed as to me appear proper ones, and such there are, I should not feel myself disinclined to see some measures taken for the restraining of prodigality: but this I cannot look upon as being of the number. My reasons I will now endeavour to lay before you.

In the first place, I take it, that it is neither natural nor usual for prodigals, as such, to betake themselves to this method: I mean, that of giving a rate of interest above the ordinary one, to supply their wants.

In the first place, no man, I hope you will allow, prodigal or not prodigal, ever thinks of borrowing money to spend, so long as he has *ready money* of his own, or effects which he can turn into ready money without loss. And this deduction strikes off what, I suppose, you will look upon as the greatest proportion of the persons subject, at any given time, to the imputation of prodigality.

In the next place, no man, in such a country as Great Britain at least, has occasion, or is at all likely, to take up money at an extraordinary rate of interest, who has *security* to give, equal to that upon which money is commonly to be had at the highest ordinary rate. While so many advertise, as are to be seen every day advertising, money to be lent at five per cent., what should possess a man, who has anything to offer that can be called a security, to give, for example, six per cent., is more than I can conceive.

You may say, perhaps, that a man who wishes to lend his money out upon security, wishes to have his interest punctually, and that without the expense, and hazard, and trouble, and odium of going to law; and that on this account it is better to have a sober man to deal with than a prodigal. So far I allow you; but were you to add, that on this account it would be necessary for a prodigal to offer more than another man, there I should disagree with you. In the first place, it is not so easy a thing, nor, I take it, a common thing, for the lender upon security to be able to judge, or even to form any attempt to judge, whether the conduct of one who offers to borrow his money is or is not of such a cast as to bring him under this description. The question, prodigal or not prodigal, depends upon two pieces of information, neither of which, in general, is very easy to come at: on the one hand, the amount of his means and reasonable expectations; on the other hand, the amount of his expenditure. The goodness or badness of the security is a question of a very different nature: upon this head, every man has a known and ready means of obtaining that sort of information which is the most satisfactory the nature of things affords, by going to his lawyer. It is accordingly, I take it, on their lawyer's opinion, that lenders in general found their determination in these cases, and not upon any calculations they may have formed concerning the receipt and expenditure of the borrower. But even supposing a man's disposition to prodigality to be ever so well known, there are always enough to be found, to whom such a disposition would be rather an inducement than an objection, so long as they were satisfied with

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the security. Everybody knows the advantage to be made in case of mortgage, by foreclosing or forcing a sale: and that this advantage is not uncommonly looked out for, will, I believe, hardly be doubted by any one who has had occasion to observe the course of business in the court of Chancery.

In short, so long as a prodigal has anything to pledge, or to dispose of — whether in possession, or even in reversion — whether of a certain, or even of a contingent nature, I see not how he can receive the smallest benefit from any laws that are or can be made to fix the rate of interest. For, suppose the law to be efficacious as far as it goes, and that the prodigal can find none of those monsters called usurers to deal with him, does he lie quiet? No such thing: he goes on and gets the money he wants, by selling his interest, instead of borrowing. He goes on, I say; for if he has prudence enough to stop him anywhere, he is not that sort of man whom it can be worth while for the law to attempt stopping by such means. It is plain enough, then, that to a prodigal thus circumstanced, the law cannot be of any service; on the contrary, it may, and in many cases must, be of disservice to him, by denying him the option of a resource, which, how disadvantageous soever, could not well have proved more so, but would naturally have proved less so, than those which it leaves still open to him. But of this hereafter.

I now come to the only remaining class of prodigals, viz. those who have nothing that can be called a security to offer. These, I should think, are not more likely to get money upon an extraordinary rate of interest, than an ordinary one. Persons who either feel, or find reasons for pretending to feel, a friendship for the borrower, cannot take of him more than the ordinary rate of interest: persons who have no such motive for lending him, will not lend him at all. If they know him for what he is, that will prevent them, of course; and even though they should know nothing of him by any other circumstance, the very circumstance of his not being able to find a friend to trust him at the highest ordinary rate, will be sufficient reason to a stranger for looking upon him as a man who, in the judgment of his friends, is not likely to pay.

The way that prodigals run into debt, after they have spent their substance, is, I take it, by borrowing of their friends and acquaintance, at ordinary interest, or more commonly at no interest, small sums, such as each man may be content to lose, or be ashamed to ask real security for; and as prodigals have generally an extensive acquaintance (extensive acquaintance being at once the cause and effect of prodigality,) the sum-total of the money a man may thus find means to squander may be considerable, though each sum borrowed may, relatively to the circumstances of the lender, have been inconsiderable. This I take to be the race which prodigals, who have spent their all, run at present, under the present system of restraining laws; and this and no other, I take it, would be the race they would run, were those laws out of the way.

Another consideration there is, I think, which will complete your conviction, if it was not complete before, of the inefficacy of these laws, as to the putting any sort of restraint upon prodigality. This is, that there is another set of people from whom prodigals get what they want, and always will get it so long as credit lasts, in spite of all laws against high interest; and, should they find it necessary, at an expense more than equal to any excess of interest they might otherwise have to give: I mean, the tradesmen who deal in the goods they want. Everybody knows it is much easier to get goods than money. People trust goods upon much slenderer security than they do money: it is very natural they should do so. Ordinary profit of trade upon the whole capital employed in a man's trade, — even after the expense of warehouse-rent, journeymen's wages, and other such general charges, are taken into the account, and set against it, — is at least equal to double interest; say 10 per cent. Ordinary profit upon any particular parcel of goods must therefore be a great deal more, say at least triple interest, 15 per cent. In the way of trading, then, a man can afford to be at least three times as adventurous as he can in the way of lending, and with equal prudence. So long, then, as a man is looked upon as one who will pay, he can much easier get the goods he wants than he could get the money to buy them with, though he were content to give for it twice, or even thrice, the ordinary rate of interest.

Supposing anybody, for the sake of extraordinary gain, to be willing to run the risk of supplying him, although they did not look upon his personal security to be equal to that of another man, and for the sake of the extraordinary profit, to run the extraordinary risk, — in the trader — in short, in every sort of trader whom he was accustomed to deal with in his solvent days, he sees a person who may accept of any rate of profit, without the smallest danger from any laws that are or can be made against usury. How idle, then, to think of stopping a man from making six, or seven, or eight per cent. interest, when, if he chooses to run a risk proportionable, he may in this way make 30 or 40 per cent., or any rate you please. And as to the prodigal, if he cannot get what he wants upon these terms, what chance is there of his getting it upon any terms, supposing the laws against

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usury to be away? This, then, is another way in which, instead of serving, it injures him, by narrowing his option, and driving him from a market which might have proved less disadvantageous, to a more disadvantageous one.

As far as prodigality, then, is concerned, I must confess I cannot see the use of stopping the current of expenditure in this way at the fosset, when there are so many unpreventable ways of letting it run out at the bung-hole.

Whether any harm is done to society, upon the whole, by letting so much money drop at once out of the pockets of the prodigal, who would have gone on wasting it, into the till of the frugal tradesman, who will lay it up, is not worth the inquiry for the present purpose: what is plain is, that, so far as the saving the prodigal from paying at an extraordinary rate for what he gets to spend, is the object of the law, that object is not at all promoted by fixing the rate of interest upon money borrowed. On the contrary, if the law has any effect, it runs counter to that object; since, were he to borrow, it would only be in as far as he could borrow at a rate inferior to that at which otherwise he would be obliged to buy. Preventing his borrowing at an extra rate may have the effect of increasing his distress, but cannot have the effect of lessening it: allowing his borrowing at such a rate might have the effect of lessening his distress, but could not have the effect of increasing it.

To put a stop to prodigality, if indeed it be worth while, I know but of one effectual course that can be taken, in addition to the incomplete and insufficient courses at present practicable; and that is, to put the convicted prodigal under an *interdict*, as was practised formerly among the Romans, and is still practised among the French, and other nations who have taken the Roman law for the ground-work of their own. But to discuss the expediency, or sketch out the details of such an institution, belongs not to the present purpose.

LETTER IV.

REASONS FOR RESTRAINT — PROTECTION OF INDIGENCE.

BESIDES prodigals, there are three other classes of persons, and but three, for whose security I can conceive these restrictive laws to have been designed: I mean the indigent, the rashly enterprising, and the simple; those whose pecuniary necessities may dispose them to give an interest above the ordinary rate, rather than not have it; and those who, from rashness, may be disposed to venture upon giving such a rate, or from carelessness, combined with ignorance, may be disposed to acquiesce in it.

In speaking of these three different classes of persons, I must beg leave to consider one of them at a time; and accordingly, in speaking of the indigent, I must consider indigence in the first place as untinctured with simplicity. On this occasion I may suppose, and ought to suppose, no particular defect in a man's judgment, or his temper, that should mislead him, more than the ordinary run of men. He knows what is his interest as well as they do, and is as well disposed and able to pursue it as they are.

I have already intimated what I think is undeniable, that there are no one, or two, or other limited number of rates of interest, that can be equally suited to the unlimited number of situations, in respect of the degree of *exigency* in which a man is liable to find himself: insomuch that, to the situation of a man who, by the use of money, can make for example 11 per cent., 6 per cent. is as well adapted as 5 per cent. is to the situation of him who can make but 10, — to that of him who can make 12 per cent., 7, and so on. So, in the case of his wanting it to save himself from a loss (which is that which is most likely to be in view under the name of *exigency*,) if that loss would amount to 11 per cent., 6 per cent. is as well adapted to his situation as 5 per cent. would be to the situation of him who had but a loss amounting to 10 per cent. to save himself from by the like means. And in any case, though, in proportion to the amount of the loss, the rate of interest were even so great as that the clear saving should not amount to more than 1 per cent. or any fraction per cent., yet so long as it amounted to anything, he would be just so much the better for borrowing, even on such comparatively disadvantageous terms. If, instead of gain, we put any other kind of benefit or advantage — if, instead of loss, we put any other kind of mischief or inconvenience of equal value, the result will be the same.

A man is in one of these situations, suppose, in which it would be for his advantage to borrow. But his circumstances are such, that it would not be worth anybody's while to lend him, at the highest rate which it is proposed the law should allow — in short, he cannot get it at that rate. If he thought he *could* get it at that rate, most surely he would not give a higher: he may be trusted for that, for by the supposition he has nothing defective in his understanding. But the fact is, he cannot get it at that lower rate. At a higher rate, however, he could get it: and at that rate, though higher, it would be worth his while to get it: so he judges, who has nothing to hinder him from judging right — who has every motive and every means for forming a right judgment — who has every motive and every means for informing himself of the circumstances upon which rectitude of judg-

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ment, in the case in question, depends. The legislator, who knows nothing, nor can know anything, of any one of all these circumstances — who knows nothing at all about the matter, comes and says to him — "It signifies nothing; you shall not have the money: for it would be doing you a mischief to let you borrow it upon such terms." And this out of prudence and loving-kindness! There may be worse cruelty, but can there be greater folly?

The folly of those who persist, as is supposed without reason, in not taking advice, has been much expatiated upon. But the folly of those who persist, without reason, in forcing their advice upon others, has been but little dwelt upon, though it is, perhaps, the more frequent, and the more flagrant of the two. It is not often that one man is a better judge for another, than that other is for himself, even in cases where the adviser will take the trouble to make himself master of as many of the materials for judging, as are within the reach of the person to be advised. But the legislator is not, cannot be, in the possession of any one of these materials. What private can be equal to such public folly?

I should now speak of the *enterprising* class of borrowers: those who, when characterized by a single term, are distinguished by the unfavourable appellation of *projectors;* but in what I shall have to say of them, Dr. Smith, I begin to foresee, will bear so material a part, that when I come to enter upon that subject, I think to take my leave of you, and address myself to him.

LETTER V.

REASONS FOR RESTRAINT — PROTECTION OF SIMPLICITY.

I COME, lastly, to the case of the simple. Here, in the first place, I think I am by this time entitled to observe, that no simplicity, short of absolute idiotism, can cause the individual to make a more groundless judgment, than the legislator, who, in the circumstances above stated, should pretend to confine him to any given rate of interest, would have made for him.

Another consideration, equally conclusive, is, that were the legislator's judgment ever so much superior to the individual's, how weak soever that may be, the exertion of it on this occasion can never be any otherwise than useless, so long as there are so many similar occasions, as there ever must be, where the simplicity of the individual is equally likely to make him a sufferer, and on which the legislator cannot interpose with effect, nor has ever so much as thought of interposing.

Buying goods with money, or upon credit, is the business of every day; borrowing money is the business only of some particular exigency, which, in comparison, can occur but seldom. Regulating the prices of goods in general would be an endless task, and no legislator has ever been weak enough to think of attempting it. And supposing he were to regulate the prices, what would that signify for the protection of simplicity, unless he were to regulate also the quantum of what each man should buy? Such quantum is indeed regulated, or rather means are taken to prevent buying altogether: but in what cases? In those only where the weakness is adjudged to have arrived at such a pitch as to render a man utterly unqualified for the management of his affairs; in short, when it has arrived at the length of idiocy.

But in what degree soever a man's weakness may expose him to imposition, he stands much more exposed to it in the way of buying goods, than in the way of borrowing money. To be informed, beforehand, of the ordinary prices of all the sorts of things a man may have occasion to buy, may be a task of considerable variety and extent. To be informed of the ordinary rate of interest, is to be informed of one single fact, too interesting not to have attracted attention, and too simple to have escaped the memory. A few per cent. enhancement upon the price of goods, is a matter that may easily enough pass unheeded; but a single per cent. beyond the ordinary interest of money, is a stride more conspicuous and startling, than many per cent. upon the price of any kind of goods.

Even in regard to subjects, which by their importance would, if any, justify a regulation of their price, such as for instance land, I question whether there ever was an instance where, without some such ground as, on the one side fraud, or suppression of facts necessary to form a judgment of the value, or at least ignorance of such facts, on the other, a bargain was rescinded, merely because a man had sold too cheap, or bought too dear. Were I to take a fancy to give a hundred years purchase instead of thirty, for a piece of land, rather than not have it, I don't think there is any court in England, or indeed anywhere else, that would interpose to hinder me, much less to punish the seller with the loss of three times the purchase money, as in the case of usury. Yet when I had got my piece of land, and paid my money, repentance, were the law ever so well disposed to assist me, might be unavailing: for the seller might have spent the money, or gone off with it. But, in the case of borrowing money, it is the borrower always, who, according to the indefinite or short term for which money is lent, is on the safe side: any imprudence he may have committed with regard to the rate of interest may be corrected at any time: if

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I find I have given too high an interest to one man, I have no more to do than to borrow of another at a lower rate, and pay off the first: if I cannot find anybody to lend me at a lower, there cannot be a more certain proof that the first was not in reality too high. But of this hereafter.

LETTER VI.

MISCHIEFS OF THE ANTI-USURIOUS LAWS.

In the preceding Letters, I have examined all the modes I can think of, in which the restraints imposed by the laws against usury can have been fancied to be of service.

I hope it appears by this time, that there are no ways in which those laws can do any good. But there are several, in which they cannot but do mischief.

The first I shall mention, is that of precluding so many people altogether from the getting the money they stand in need of, to answer their respective exigencies. Think what a distress it would produce, were the liberty of borrowing denied to everybody: denied to those who have such security to offer, as renders the rate of interest they have to offer a sufficient inducement, for a man who has money, to trust them with it. Just that same sort of distress is produced, by denying that liberty to so many people whose security, though if they were permitted to add something to that rate it would be sufficient, is rendered insufficient by their being denied that liberty. Why the misfortune of not being possessed of that arbitrarily exacted degree of security should be made a ground for subjecting a man to a hardship which is not imposed on those who are free from that misfortune, is more than I can see. To discriminate the former class from the latter, I can see but this one circumstance, viz. that their necessity is greater. This it is by the very supposition: for were it not, they could not be, what they are supposed to be, willing to give more to be relieved from it. In this point of view, then, the sole tendency of the law is, to heap distress upon distress.

A second mischief is that of rendering the terms so much the worse, to a multitude of those whose circumstances exempt them from being precluded altogether from getting the money they have occasion for. In this case, the mischief, though necessarily less intense than in the other, is much more palpable and conspicuous. Those who cannot borrow may get what they want, so long as they have anything to sell. But while, out of loving-kindness or whatsoever other motive, the law precludes a man from *borrowing* upon terms which it deems too disadvantageous, it does not preclude him from *selling*, upon any terms, howsoever disadvantageous. Everybody knows that forced sales are attended with a loss: and to this loss, what would be deemed a most extravagant interest bears in general no proportion. When a man's moveables are taken in execution, they are, I believe, pretty well sold, if, after all expenses paid, the produce amounts to two-thirds of what it would cost to replace them. In this way, the providence and loving-kindness of the law costs him 33 per cent. and no more, supposing, what is seldom the case, that no more of the effects are taken than what is barely necessary to make up the money due. If, in her negligence and weakness, she were to suffer him to offer 11 per cent. per annum for forbearance, it would be three years before he paid what he is charged with, in the first instance, by her wisdom.

Such being the kindness done by the law to the owner of moveables, let us see how it fares with him who has an interest in immoveables. Before the late war, thirty years' purchase for land might be reckoned, I think it is pretty well agreed, a medium price. During the distress produced by the war, lands which it was necessary should be sold, were sold at twenty, eighteen, nay, I believe, in some instances, even so low as fifteen years' purchase. If I do not misrecollect, I remember instances of lands put up to public auction, for which nobody bid so high as fifteen. In many instances, villas which had been bought before the war, or at the beginning of it, and in the interval had been improved rather than impaired, sold for less than half, or even the quarter, of what they had been bought for. I dare not here for my part pretend to be exact: but on this passage, were it worth their notice, Mr. Skinner, or Mr. Christie, could furnish very instructive notes. Twenty years' purchase, instead of thirty, I may be allowed to take, at least for illustration. An estate, then, of £100 a-year, clear of taxes, was devised to a man, charged, suppose, with £1500, with interest till the money should be paid. Five per cent. interest, the utmost which could be accepted from the owner, did not answer the incumbrancer's purpose: he chose to have the money. But 6 per cent., perhaps, would have answered his purpose; if not, most certainly it would have answered the purpose of somebody else: for multitudes there all along were, whose purposes were answered by five per cent. The war lasted, I think, seven years; the depreciation of the value of land did not take place immediately; but as, on the other hand, neither did it immediately recover its former price upon the peace, if indeed it has even yet recovered it, we may put seven years for the time during which it would be more advantageous to pay this extraordinary rate of interest than sell the land, and during which, accordingly, this extraordinary rate of interest would have had to run. One per cent. for seven years, is not quite of

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equal worth to seven per cent. the first year; say, however, that it is. The estate, which before the war was worth thirty years' purchase, that is, £3000, and which the devisor had given to the devisee for that value, being put up to sale, fetched but twenty years' purchase, £2000. At the end of that period it would have fetched its original value, £3000. Compare, then, the situation of the devisee at the seven years' end, under the law, with what it would have been without the law. In the former case, the land selling for twenty years' purchase, *i. e.* £2000, what he would have, after paying the £1500, is £500; which, with the interest of that sum at five per cent. for seven years, viz. £175, makes, at the end of that seven years, £675. In the other case, paying six per cent. on the £1500, that is, £90 a-year, and receiving all that time the rent of the land, viz. £100, he would have had, at the seven years' end, the amount of the remaining £10 during that period, that is, £70, in addition to his £1000; £675 subtracted from £1070 leaves £395. This £395, then, is what he loses out of £1070, almost thirty-seven per cent. of his capital, by the loving-kindness of the law. Make the calculations, and you will find, that by preventing him from borrowing the money at six per cent. interest, it makes him nearly as much a sufferer as if he had borrowed it at ten.

What I have said hitherto is confined to the case of those who have present value to give for the money they stand in need of. If they have no such value, then, if they succeed in purchasing assistance upon any terms, it must be in breach of the law; their lenders exposing themselves to its vengeance; for I speak not here of the accidental case of its being so constructed as to be liable to evasion. But, even in this case, the mischievous influence of the law still pursues them — aggravating the very mischief it pretends to remedy. Though it be inefficacious in the way in which the legislator wishes to see it efficacious, it is efficacious in the way opposite to that in which he would wish to see it so. The effect of it is, to raise the rate of interest higher than it would be otherwise, and that in two ways. In the first place, a man must, in common prudence, as Dr. Smith observes, make a point of being indemnified, not only for whatsoever extraordinary risk it is that he runs, independently of the law, but for the very risk occasioned by the law: he must be *insured*, as it were, against the law. This cause would operate, were there even as many persons ready to lend upon the illegal rate, as upon the legal. But this is not the case: a great number of persons are, of course, driven out of this competition by the danger of the business, and another great number by the disrepute which, under cover of these prohibitory laws or otherwise, has fastened itself upon the name of usurer. So many persons, therefore, being driven out of the trade, it happens in this branch, as it must necessarily in every other, that those who remain have the less to withhold them from advancing their terms; and without confederating (for it must be allowed that confederacy in such a case is plainly impossible) each one will find it easier to push his advantage up to any given degree of exorbitancy, than he would, if there were a greater number of persons of the same stamp to resort to.

As to the case where the law is so worded as to be liable to be evaded, in this case it is partly inefficacious and nugatory, and partly mischievous. It is nugatory as to all such whose confidence of its being so is perfect: it is mischievous, as before, in regard to all such who fail of possessing that perfect confidence. If the borrower can find nobody at all who has confidence enough to take advantage of the flaw, he stands precluded from all assistance, as before: and though he should, yet the lender's terms must necessarily run the higher, in proportion to what his confidence wants of being perfect. It is not likely that it should be perfect: it is still less likely that he should acknowledge it so to be: it is not likely, at least as matters stand in England, that the worst-penned law made for this purpose should be altogether destitute of effect: and while it has any, that effect, we see, must be in one way or other mischievous.

I have already hinted at the disrepute, the ignominy, the reproach, which prejudice, the cause and the effect of these restrictive laws, has heaped upon that perfectly innocent and even meritorious class of men, who, not more for their own advantage than to the relief of the distresses of their neighbour, may have ventured to break through these restraints. It is certainly not a matter of indifference, that a class of persons, who, in every point of view in which their conduct can be placed, whether in relation to their own interest or in relation to that of the persons whom they have to deal with, as well on the score of prudence as on that of beneficence (and of what use is even benevolence, but in as far as it is productive of beneficence?) deserve praise rather than censure, should be classed with the abandoned and profligate, and loaded with a degree of infamy which is due to those only whose conduct is in its tendency the most opposite to their own.

"This suffering," it may be said, "having already been taken account of, is not to be brought to account a second time: they are aware, as you yourself observe, of this inconvenience, and have taken care to get such amends for it, as they themselves look upon as sufficient." True: but is it sure that the compensation, such as it is, will always, in the event, have proved a sufficient one? Is there no room here for miscalculation? May

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there not be unexpected, unlooked-for incidents, sufficient to turn into bitterness the utmost satisfaction which the difference of pecuniary emolument could afford? For who can see to the end of that inexhaustible train of consequences that are liable to ensue from the loss of reputation?—who can fathom the abyss of infamy? At any rate, this article of mischief, if not an addition in its quantity to the others above noticed, is at least distinct from them in its nature, and as such ought not to be overlooked.

Nor is the event of the execution of the law by any means an unexampled one: several such, at different times, have fallen within my notice. Then comes absolute perdition: loss of character, and forfeiture, not of three times the extra-interest, which formed the profit of the offence, but of three times the principal, which gave occasion to it.*

The last article I have to mention in the account of mischief, is, the corruptive influence exercised by these laws on the morals of the people, by the pains they take, and cannot but take, to give birth to treachery and ingratitude. To purchase a possibility of being enforced, the law neither has found, nor, what is very material, must it ever hope to find, in this case, any other expedient, than that of hiring a man to break his engagement, and to crush the hand that has been reached out to help him. In the case of informers in general, there has been no troth plighted, nor benefit received. In the case of real criminals invited by rewards to inform against accomplices, it is by such *breach* of faith that society is held together, as in other cases by the *observance* of it. In the case of real crimes, in proportion as their mischievousness is apparent, what cannot but be manifest even to the criminal, is, that it is by the adherence to his engagement that he would do an injury to society, and that, by the breach of such engagement, instead of doing mischief he is doing good: in the case of usury, this is what no man can know, and what one can scarcely think it possible for any man, who in the character of the borrower has been concerned in such a transaction, to imagine. He knew that, even in his own judgment, the engagement was a beneficial one to himself, or he would not have entered into it: and nobody else but the lender is affected by it.

LETTER VII.

EFFICACY OF ANTI-USURIOUS LAWS.

BEFORE I quit altogether the consideration of the case in which a law, made for the purpose of limiting the rate of interest, may be inefficacious with regard to that end, I cannot forbear taking some further notice of a passage already alluded to of Dr. Smith's: because, to my apprehension, that passage seems to throw upon the subject a degree of obscurity, which I could wish to see cleared up in a future edition of that valuable work.

"No law," says he,† "can reduce the common rate of interest below the lowest ordinary market rate at the time when that law was made. Notwithstanding the edict of 1766, by which the French king attempted to reduce the rate of interest from five to four per cent., money continued to be lent in France at five per cent., the law being evaded in several different ways."

As to the general position, if so it be, so much, according to me, the better: but I must confess I do not see why this should be the case. It is for the purpose of proving the truth of this general position, that the fact of the inefficacy of this attempt seems to be adduced: for no other proof is adduced but this. But, taking the fact for granted, I do not see how it can be sufficient to support the inference. The law, we are told at the same time, was evaded: but we are not told how it came to be open to evasion. It might be owing to a particular defect in the penning of that particular law; or, what comes to the same thing, in the provisions made for carrying it into execution. In either case, it affords no support to the general position: nor can that position be a just one, unless it were so in the case where every provision had been made that could be made, for giving efficacy to the law. For the position to be true, the case must be, that the law would still be broken, even after every means of what can properly be called *evasion* had been removed. True or untrue, the position is certainly not self-evident enough to be received without proof: yet nothing is adduced in proof of it but the fact above noticed, which we see amounts to no such thing. What is more, I should not expect to find it capable of proof. I do not see what it is that should render the law incapable of "reducing the common rate of interest below the lowest ordinary market rate," but such a state of things, such a combination of circumstances, as should afford obstacles equally powerful, or nearly so, to the efficacy of the law against all higher rates. For destroying the law's efficacy altogether, I know of nothing that could serve, but a resolution on the part of all persons anyway privy not to inform: but by such a resolution, any higher rate is just as effectually protected as any lower one. Suppose the resolution, strictly speaking, universal, and the law must in all instances be equally inefficacious—all rates of interest

Law evaded.

* See *Introduction to the Principles of Morals and Legislation*, Chapter XVI. *On the proportion between punishments and offences.* Vol. I. p. 86.

† B. ii. c. 10, vol. ii. p. 45, edit. 8vo. 1784.

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equally free; and the state of men's dealings in this way just what it would be, were there no law at all upon the subject. But in this case, the position, in as far as it limits the inefficacy of the law to those rates which are below the "lowest ordinary market rate," is not true. For my part, I cannot conceive how any such universal resolution could have been maintained, or could ever be maintained, without an open concert, and as open a rebellion against government; nothing of which sort appears to have taken place: and, as to any particular confederacies, they are as capable of protecting any higher rates against the prohibition as any lower ones.

Thus much, indeed, must be admitted, that the low rate in question, viz. that which was the lowest ordinary market rate immediately before the making of the law, is likely to come in for the protection of the public against the law, more frequently than any other rate. That must be the case on two accounts: first, because, by being of the number of the ordinary rates, it was, by the supposition, more frequent than any extraordinary ones: secondly, because the disrepute annexed to the idea of usury, a force which might have more or less efficacy in excluding from the protection above spoken of such extraordinary rates, cannot well be supposed to apply itself, or at least not in equal degree, to this low and ordinary rate. A lender has certainly less to stop him from taking a rate which may be taken without disrepute, than from taking one which a man could not take without subjecting himself to that inconvenience: nor is it likely that men's imaginations and sentiments should testify so sudden an obsequiousness to the law, as to stamp disrepute to-day, upon a rate of interest to which no such accompaniment had stood annexed the day before.

Were I to be asked how I imagined the case stood in the particular instance referred to by Dr. Smith, —judging from his account of it, assisted by general probabilities, I should answer thus: — The law, I should suppose, was not so penned as to be altogether proof against evasion. In many instances, of which it is impossible any account should have been taken, it was indeed conformed to: in some of those instances, people who would have lent otherwise, abstained from lending altogether; in others of those instances, people lent their money at the reduced legal rate. In other instances, again, the law was broken: the lenders trusting, partly to expedients recurred to for evading it, partly to the good faith and honour of those whom they had to deal with: in this class of instances it was natural, for the two reasons above suggested, that those where the old legal rate was adhered to, should have been the most numerous. From the circumstance, not only of their number, but of their more direct repugnancy to the particular recent law in question, they would naturally be the most taken notice of. And this, I should suppose, was the foundation in point of fact for the Doctor's general position above mentioned, that "no law *can* reduce the common rate of interest below the lowest ordinary market rate at the time when that law was made."

In England, as far as I can trust my judgment and imperfect general recollection of the purport of the laws relative to this matter, I should not suppose that the above position would prove true. That there is no such thing as any palpable and universally notorious, as well as universally practicable receipt for that purpose, is manifest from the examples which, as I have already mentioned, every now and then occur, of convictions upon these statutes. Two such receipts, indeed, I shall have occasion to touch upon presently: but they are either not obvious enough in their nature, or too troublesome or not extensive enough in their application, to have despoiled the law altogether of its terrors or of its preventive efficacy.

In the country in which I am writing, the whole system of laws on this subject is perfectly, and very happily, inefficacious. The rate fixed by law is 5 per cent.: many people lend money; and nobody at that rate: the lowest ordinary rate, upon the very best real security, is 8 per cent.: 9, and even 10, upon such security, are common. Six or seven may have place, now and then, between relations or other particular friends: because, now and then, a man may choose to make a present of one or two per cent. to a person whom he means to favour. The contract is renewed from year to year: for a thousand roubles, the borrower, in his written contract, obliges himself to pay at the end of the year one thousand and fifty. Before witnesses, he receives his thousand roubles; and, without witnesses, he immediately pays back his thirty roubles, or his forty roubles, or whatever the sum may be, that is necessary to bring the real rate of interest to the rate verbally agreed on.

This contrivance, I take it, would not do in England: but why it would not, is a question which it would be in vain for me to pretend, at this distance from all authorities, to discuss.

LETTER VIII.

VIRTUAL USURY ALLOWED.

HAVING proved, as I hope, by this time, the utter impropriety of the law's limiting the rate of interest in every case that can be conceived, it may be rather matter of curiosity than anything else, to inquire how far the law on this head is consistent with itself, and with any principles upon which it can have built.

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1. *Drawing and re-drawing* is a practice which it will be sufficient here to hint at. It is perfectly well known to all merchants, and may be so to all who are not merchants, by consulting Dr. Smith. In this way, he has shown how money may be, and has been, taken up at so high a rate as 13 or 14 per cent.; a rate nearly three times as high as the utmost which the law professes to allow. The extra interest is in this case masked under the names of *commission*, and price of *exchange*. The commission is but small upon each loan — not more, I think, than one half per cent.: custom having stretched so far but no farther, it might be thought dangerous perhaps, to venture upon any higher allowance under that name. The charge being repeated a number of times in the course of the year, makes up in frequency what it wants in weight. The transaction is by this shift rendered more troublesome indeed, but not less practicable, to such parties as are agreed about it. But if usury is good for merchants, I do not very well see what should make it bad for everybody else.

2. At this distance from all the fountains of legal knowledge, I will not pretend to say whether the practice of *selling accepted bills* at an under-value would hold good against all attacks. It strikes my recollection as a pretty common one, and I think it could not be brought under any of the penal statutes against usury. The adequateness of the consideration might, for aught I know, be attacked with success, in a court of equity — or perhaps, if there were sufficient evidence (which the agreement of the parties might easily prevent,) by an action at common law, for money had and received. If the practice be really proof against all attacks, it seems to afford an effectual and pretty commodious method of evading the restrictive laws. The only restraint is, that it requires the assistance of a third person, a friend of the borrower's: as for instance, *B*, the real borrower, wants £100, and finds *U*, a usurer, who is willing to lend it to him at 10 per cent. *B* has *F*, a friend, who has not the money himself to lend him, but is willing to stand security for him to that amount. *B* therefore draws upon *F*, and *F* accepts a bill of £100, at 5 per cent. interest, payable at the end of a twelvemonth from the date. *F* draws a like bill upon *B*: each sells his bill to *U* for £50; and it is endorsed to *U* accordingly. The £50 that *F* receives, he delivers over without any consideration to *B*. This transaction, if it be a valid one, and if a man can find such a friend, is evidently much less troublesome than the practice of drawing and re-drawing. And this, if it be practicable at all, may be practised by persons of any description, concerned or not in trade. Should the effect of this page be to suggest an expedient, and that a safe and commodious one, for evading the laws against usury, to some, to whom such an expedient might not otherwise have occurred, it will not lie very heavy upon my conscience. The prayers of usurers, whatever efficacy they may have in lightening the burthen, I hope I may lay some claim to. And I think you will not now wonder at my saying, that in the efficacy of such prayers I have not a whit less confidence, than in that of the prayers of any other class of men.

One apology I shall have to plead at any rate — that in pointing out these flaws to the individual who may be disposed to creep out at them, I point them out at the same time to the legislator, in whose power it is to stop them up, if in his opinion they require it. If, notwithstanding such opinion, he should omit to do so, the blame will lie, not on my industry, but on his negligence.

These, it may be said, should they even be secure and effectual evasions, are still but evasions, and, if chargeable upon the law at all, are chargeable not as inconsistencies but as oversights. Be it so. Setting these aside, then, as expedients practised or practicable only behind its back, I will beg leave to remind you of two others, practised from the day of its birth, under its protection, and before its face.

The first I shall mention is *pawn-broking*. In this case there is the less pretence for more than ordinary interest, inasmuch as the security is in this case not only equal to, but better than, what it can be in any other; to wit, the present possession of a moveable thing, of easy sale, on which the creditor has the power, and certainly does not want the inclination, to set such price as is most for his advantage. If there be a case in which the allowing of such extraordinary interest is attended with more danger than another, it must be this: which is so particularly adapted to the situation of the lowest poor, that is, of those who on the score of indigence or simplicity, or both, are most open to imposition. This trade, however, the law, by regulating, avowedly protects. What the rate of interest is, which it allows to be taken in this way, I cannot take upon me to remember; but I am much deceived if it amounts to less than 12 per cent. in the year, and I believe it amounts to a good deal more.* Whether it were 12 per cent. or 1200, I believe would make in practice but little difference. What *commission* is in the business of drawing and re-drawing, *warehouse-room* is in that of pawnbroking. Whatever limits, then, are set to the profits of this trade, are set, I take it, not by the vigilancy of the law, but, as in the case of other trades, by the compe-

* The rate of charges will be found in 39 & 40 G. III. c. 99. The average is about 20 per cent. —*Ed.*

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tition amongst the traders. Of the other regulations contained in the acts relative to this subject, I recollect no reason to doubt the use.

The other instance is that of *bottomry* and *respondentia:* for the two transactions, being so nearly related, may be spoken of together. Bottomry is the usury of pawnbroking: respondentia is usury at large, but combined in a manner with insurance, and employed in the assistance of a trade carried on by sea. If any species of usury is to be condemned, I see not on what grounds this particular species can be screened from the condemnation. "Oh, but," says Sir William Blackstone, or anybody else who takes upon himself the task of finding a reason for the law, "this is a maritime country, and the trade which it carries on by sea is the great bulwark of its defence." It is not necessary I should here inquire, whether that branch, which, as Dr. Smith has shown, is, in every view but the mere one of defence, less beneficial to a nation than two others out of the four branches which comprehend all trade, has any claim to be preferred to them in this or any other way. I admit, that the liberty which this branch of trade enjoys, is no more than what it is perfectly right it should enjoy. What I want to know is, what there is in the class of men embarked in this trade, that should render beneficial to them, a liberty which would be ruinous to everybody else? Is it that sea adventures have less hazard on them than land adventures? or that the sea teaches those who have to deal with it, a degree of forecast and reflection which has been denied to landmen?

It were easy enough to give farther and farther extension to this charge of inconsistency, by bringing under it the liberty given to insurance in all its branches, to the purchase and sale of annuities and of *post-obits;* in a word, to all cases where a man is permitted to take upon himself an unlimited degree of risk, receiving for so doing an unlimited compensation. Indeed, I know not where the want of instances would stop me: for in what part of the magazine of events, about which human transactions are conversant, is certainty to be found? But to this head of argument, this argument *ad hominem*, as it may be called, the use of which is but subsidiary, and which has more of confutation in it than of persuasion or instruction, I willingly put an end.

LETTER IX.

BLACKSTONE CONSIDERED.

I HOPE you are, by this time, at least, pretty much of my opinion, that there is just the same sort of harm, and no other, in making the best terms one can for one's self in a money loan, as there is in any other sort of bargain. If you are not, Blackstone however is, whose opinion I hope you will allow to be worth something. In speaking of the rate of interest,* he starts a parallel between a bargain for the loan of money, and a bargain about a horse, and pronounces, without hesitation, that the harm of making too good a bargain is just as great in the one case as in the other. As money-lending, and not horse-dealing, was what you lawyers call the *principal case*, he drops the horse-business as soon as it has answered the purpose of illustration which it was brought to serve. But as, in my conception, as well the reasoning by which he supports the decision, as that by which anybody else could have supported it, is just as applicable to the one sort of bargain as to the other, I will carry on the parallel a little farther, and give the same extent to the reasoning, as to the position which it is made use of to support. This extension will not be without its use: for if the position, when thus extended, should be found just, a practical inference will arise; which is, that the benefits of these restraints ought to be extended from the money-trade to the horse-trade. That my own opinion is not favourable to such restraints in either case, has been sufficiently declared; but if more respectable opinions than mine are still to prevail, they will not be the less respectable for being consistent.

The sort of bargain which the learned commentator has happened to pitch upon for the illustration, is indeed, in the case illustrating, as in the case illustrated, a loan: but as, to my apprehension, loan or sale makes in point of reasoning no sort of difference, and as the utility of the conclusion will in the latter case be more extensive, I shall adapt the reasoning to the more important business of selling horses, instead of the less important one of lending them.

A circumstance, that would render the extension of these restraints to the horse-trade more smooth and easy, is, that in the one track as well as in the other, the public has already got the length of calling names. *Jockeyship* — a term of reproach not less frequently applied to the arts of those who sell horses than to the arts of those who ride them — sounds, I take it, to the ear of many a worthy gentleman, nearly as bad as *usury:* and it is well known to all those who put their trust in proverbs, and not less to those who put their trust in party, that when we have got a dog to hang, who is troublesome and keeps us at bay, whoever can contrive to fasten a bad name to his tail, has gained more than half the battle. I now proceed with my application. The words in *italics* are my own: all the rest are Sir William Black-

* B. ii. ch. 30.

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stone's: and I restore, at bottom, the words I was obliged to discard in order to make room for mine.

"To demand an exorbitant price is equally contrary to conscience, for the loan of a horse, or for the loan of a sum of money: but a reasonable equivalent for the temporary inconvenience which the owner may feel by the want of it, and for the hazard of his losing it entirely, is not more immoral in one case than in the other. . . . .

"*As to selling horses*, a capital distinction must be made between a moderate and an exorbitant profit: to the former of which we give the name of *horse-dealing*,[a] to the latter the truly odious appellation of *jockeyship*:[b] the former is necessary in every civil state, if it were but to exclude the latter. For, as the whole of this matter is well summed up by Grotius, "if the compensation allowed by law does not exceed the proportion of the *inconvenience which it is to the seller of the horse to part with it*,[c] or the want *which the buyer has of it*,[d] its allowance is neither repugnant to the revealed law, nor to the natural law: but if it exceeds these bounds, it is then an oppressive *jockeyship*:[e] and though the municipal laws may give it impunity, they never can make it just."

"We see that the exorbitance or moderation of *the price given for a horse*[f] depends upon two circumstances, — upon the inconvenience of parting with *the horse one has*,[g] and the hazard of *not being able to meet with such another*.[h] The inconvenience to individual *sellers of horses*[i] can never be estimated by laws; the *general price for horses*[k] must depend therefore upon the usual or general inconvenience. This results entirely from the quantity of *horses*[l] in the kingdom: for the more *horses*[m] there are *running about*[n] in any nation, the greater superfluity there will be beyond what is necessary to carry on the business of the *mail-coaches*[o] and the common concerns of life. In every nation or public community there is a certain quantity of *horses*,[p] thus, necessary, which a person well skilled in political arithmetic might perhaps calculate as exactly as a private *horse-dealer*[q] can the demand for running *horses* in his own *stables*:[r] all above this necessary quantity may be spared, or lent, *or sold*, without much inconvenience to the respective lenders *or sellers*; and the greater the national superfluity is, the more numerous will be the *sellers*,[s] and the lower ought the *national price of horse-flesh*[t] to be: but where there are not enough, or barely enough *spare horses*[u] to answer the ordinary uses of the public, *horse-flesh*[x] will be proportionably high; for *sellers*[y] will be but few, as few can submit to the inconvenience of *selling*."[z] So far the learned commentator.

I hope by this time you are worked up to a proper pitch of indignation at the neglect and inconsistency betrayed by the law, in not suppressing this species of jockeyship, which it would be so easy to do, only by fixing the price of horses. Nobody is less disposed than I am to be uncharitable: but when one thinks of the £1500 taken for Eclipse, and £2000 for Rockingham, and so on, who can avoid being shocked to think how little regard those who took such enormous prices must have had for "the law of revelation and the law of nature?" Whoever it is that is to move for the municipal law, not long ago talked of, for reducing the rate of interest, — whenever that motion is made, then would be the time for one of the Yorkshire members to get up, and move, by way of addition, for a clause for fixing and reducing the price of horses. I need not expatiate on the usefulness of that valuable species of cattle, which might have been as cheap as asses before now, if our lawgivers had been as mindful of their duty in the suppression of *jockeyship*, as they have been in the suppression of *usury*.

It may be said, against fixing the price of horse-flesh, that different horses may be of different values. I answer — and I think I shall show you as much, when I come to touch upon the subject of champerty — not more different than the values which the use of the same sum of money may be of to different persons, on different occasions.

[a] Interest. [b] Usury. [c] Hazard run.
[d] Felt by the loan. [e] Usury.
[f] Interest for money lent.
[g] It for the present. [h] Losing it entirely.
[i] Lenders. [k] Rate of general interest.
[l] Money. [m] Specie. [n] Circulating.
[o] Exchange. [p] Money. [q] Banker.
[r] Cash in his own shop. [s] Lenders.

[t] The rate of the national interest.
[u] Circulating cash. [x] Interest.
[y] Lenders. [z] Lending.

LETTER X.

GROUNDS OF THE PREJUDICES AGAINST USURY.

It is one thing to find reasons why it is *fit* a law *should* have been made — it is another to find the reasons why it *was* made: in other words, it is one thing to justify a law — it is another thing to account for its existence. In the present instance, the former task, if the observations I have been troubling you with are just, is an impossible one. The other, though not necessary for conviction, may contribute something, perhaps, in the way of satisfaction. To trace an error to its fountain-head, says Lord Coke, is to refute it; and many men there are, who till they have received this satisfaction, be the error what it may, cannot prevail upon them-

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selves to part with it. "If our ancestors have been all along under a mistake, how came they to have fallen into it?" is a question that naturally presents itself upon all such occasions. The case is, that, in matters of law more especially, such is the dominion of authority over our minds, and such the prejudice it creates in favour of whatever institution it has taken under its wing, that, after all manner of reasons that can be thought of in favour of the institution have been shown to be insufficient, we still cannot forbear looking to some unassignable and latent reason for its efficient cause. But if, instead of any such reason, we can find a cause for it in some notion, of the erroneousness of which we are already satisfied, then at last we are content to give it up without further struggle; and then, and not till then, our satisfaction is complete.

In the conceptions of the more considerable part of those through whom our religion has been handed down to us, virtue, or rather godliness, which was an improved substitute for virtue, consisted in self-denial, — not in self-denial for the sake of society, but in self-denial for its own sake. One pretty general rule served for most occasions: not to do what you had a mind to do; or, in other words, not to do what would be for your advantage. By this, of course, was meant temporal advantage; to which spiritual advantage was understood to be in constant and diametrical opposition. For the proof of a resolution on the part of a being of perfect power and benevolence, to make his few favourites happy in a state in which they *were to be*, was his determined pleasure that they should keep themselves as much strangers to happiness as possible in the state in which they *were*. Now, to get money is what most men have a mind to do; because he who has money gets, as far as it goes, most other things that he has a mind for. Of course, nobody was to get money; indeed, why should he, when he was not so much as to keep what he had got already? To lend money at interest, is to get money, or at least to try to get it; of course, it was a bad thing to lend money upon such terms. The better the terms, the worse it was to lend upon them; but it was bad to lend upon any terms by which anything could be got. What made it much the worse was, that it was acting like a Jew; for though all Christians at first were Jews, and continued to do as Jews did, after they had become Christians, yet, in process of time, it came to be discovered, that the distance between the mother and the daughter church could not be too wide.

By degrees, as old conceits gave place to new, nature so far prevailed, that the objections to getting money in general were pretty well over-ruled: but still this Jewish way of getting it was too odious to be endured. Christians were too intent upon plaguing Jews, to listen to the suggestion of doing as Jews did, even though money were to be got by it. Indeed, the easier method, and a method pretty much in vogue, was, to let the Jews get the money any how they could, and then squeeze it out of them as it was wanted.

In process of time, as questions of all sorts came under discussion, and this not the least interesting among the rest, the anti-Jewish side of it found no unopportune support in a passage of Aristotle, that celebrated heathen, who, in all matters wherein heathenism did not destroy his competence, had established a despotic empire over the Christian world. As fate would have it, that great philosopher, with all his industry and all his penetration, notwithstanding the great number of pieces of money that had passed through his hands (more perhaps than ever passed through the hands of philosopher before or since,) and notwithstanding the uncommon pains he had bestowed on the subject of generation, had never been able to discover, in any one piece of money, any organs for generating any other such piece. Emboldened by so strong a body of negative proof, he ventured at last to usher into the world the result of his observations, in the form of an universal proposition, *that all money is in its nature barren*. You, my friend, to whose cast of mind sound reason is much more congenial than ancient philosophy, — you have, I dare to say, gone before me in remarking that the practical inference from this shrewd observation, if it afforded any, should have been, that it would be to no purpose for a man to try to get five per cent. out of money — not that, if he could contrive to get so much, there would be any harm in it. But the sages of those days did not view the matter in that light.

A consideration that did not happen to present itself to that great philosopher, but which, had it happened to present itself, might not have been altogether unworthy of his notice, is, that though a *daric* would not beget another daric, any more than it would a ram, or an ewe, yet for a daric which a man borrowed, he might get a ram and a couple of ewes; and that the ewes, were the ram left with them a certain time, would probably not be barren. That then, at the end of the year, he would find himself master of his three sheep, together with two, if not three, lambs; and that, if he sold his sheep again to pay back his daric, and gave one of his lambs for the use of it in the meantime, he would be two lambs, or at least one lamb, richer than if he had made no such bargain.

These theological and philosophical conceits, the offspring of the day, were not ill seconded by principles of a more permanent complexion.

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The business of a money-lender, though only among Christians and in Christian times a proscribed profession, has nowhere, nor at any time, been a popular one. Those who have the resolution to sacrifice the present to future, are natural objects of envy to those who have sacrificed the future to the present. The children who have eaten their cake, are the natural enemies of the children who have theirs. While the money is hoped for, and for a short time after it has been received, he who lends it is a friend and benefactor: by the time the money is spent, and the evil hour of reckoning is come, the benefactor is found to have changed his nature, and to have put on the tyrant and the oppressor. It is an oppression for a man to reclaim his own money; it is none to keep it from him. Among the inconsiderate, that is, among the great mass of mankind, selfish affections conspire with the social in treasuring up all favour for the man of dissipation, and in refusing justice to the man of thrift who has supplied him. In some shape or other, that favour attends the chosen object of it through every stage of his career. But in no stage of *his* career can the man of thrift come in for any share of it. It is the general interest of those with whom a man lives, that his expense should be at least as great as his circumstances will bear; because there are few expenses which a man can launch into, but what the benefit of them is shared, in some proportion or other, by those with whom he lives. In that circle originates a standing law, forbidding every man, on pain of infamy, to confine his expenses within what is adjudged to be the measure of his means, saving always the power of exceeding that limit as much as he thinks proper; and the means assigned him by that law may be ever so much beyond his real means, but are sure never to fall short of them. So close is the combination thus formed between the idea of merit and the idea of expenditure, that a disposition to spend finds favour in the eyes even of those who know that a man's circumstances do not entitle him to the means: and an upstart, whose chief recommendation is this disposition, shall find himself to have purchased a permanent fund of respect, to the prejudice of the very persons at whose expense he has been gratifying his appetites and his pride. The lustre which the display of borrowed wealth has diffused over his character, awes men during the season of his prosperity into a submission to his insolence, and when the hand of adversity has overtaken him at last, the recollection of the height from which he has fallen, throws the veil of compassion over his injustice.

The condition of the man of thrift is the reverse. His lasting opulence procures him a share, at least, of the same envy that attends the prodigal's transient display: but the use he makes of it procures him no part of the favour which attends the prodigal. In the satisfactions he derives from that use — the pleasure of possession, and the idea of enjoying at some distant period, which may never arrive—nobody comes in for any share. In the midst of his opulence he is regarded as a kind of insolvent, who refuses to honour the bills which their rapacity would draw upon him, and who is by so much the more criminal than other insolvents, as not having the plea of inability for an excuse.

Could there be any doubt of the disfavour which attends the cause of the money-lender in his competition with the borrower, and of the disposition of the public judgment to sacrifice the interest of the former to that of the latter, the stage would afford a compendious, but a pretty conclusive proof of it. It is the business of the dramatist to study, and to conform to, the humours and passions of those on the pleasing of whom he depends for his success; it is the course which reflection must suggest to every man, and which a man would naturally fall into, though he were not to think about it. He may, and very frequently does, make magnificent pretences of giving the law to them: but woe be to him that attempts to give them any other law than what they are disposed already to receive! If he would attempt to lead them one inch, it must be with great caution, and not without suffering himself to be led by them at least a dozen. Now I question whether, among all the instances in which a borrower and a lender of money have been brought together upon the stage, from the days of Thespis to the present, there ever was one, in which the former was not recommended to favour in some shape or other —either to admiration, or to love, or to pity, or to all three;—and the other, the man of thrift, consigned to infamy.

Hence it is, that in reviewing and adjusting the interests of these apparently rival parties, the advantage made by the borrower is so apt to slip out of sight, and that made by the lender to appear in so exaggerated a point of view. Hence it is, that though prejudice is so far softened as to acquiesce in the lender's making some advantage, lest the borrower should lose altogether the benefit of his assistance, yet still the borrower is to have all the favour, and the lender's advantage is forever to be clipped, and pared down, as low as it will bear. First it was to be confined to ten per cent. then to eight, then to six, then to five, and now lately there was a report of its being to be brought down to four; with constant liberty to sink as much lower as it would. The burthen of these restraints, of course, has been intended exclusively for the lender: in reality, as I think

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you have seen, it presses much more heavily upon the borrower: I mean him who either becomes, or in vain wishes to become so. But the presents directed by prejudice, Dr. Smith will tell us, are not always delivered according to their address. It was thus that the mill-stone designed for the necks of those vermin, as they have been called, the dealers in corn, was found to fall upon the heads of the consumers. It is thus—but further examples would lead me further from the purpose.

LETTER XI.

COMPOUND INTEREST.

A WORD or two I must trouble you with, concerning *compound interest;* for compound interest is discountenanced by the law—I suppose, as a sort of usury. That, without an express stipulation, the law never gives it, I well remember: whether, in case of an express stipulation, the law allows it to be taken, I am not absolutely certain. I should suppose it might: remembering covenants in mortgages that interest should become principal. At any rate, I think the law cannot well punish it under the name of usury.

If the discountenance shown to this arrangement be grounded on the horror of the sin of usury, the impropriety of such discountenance follows of course from the arguments which show the un-"*sinfulness of* that *sin.*"

Other argument against it, I believe, was never attempted, unless it were the giving to such an arrangement the epithet of a *hard* one: in doing which, something more like a reason is given, than one gets in ordinary from the common law.

If that consistency were to be found in the common law, which has never yet been found in man's conduct, and which perhaps is hardly in man's nature, compound interest never could have been denied.

The views which suggested this denial, were, I dare to say, very good: the effects of it are, I am certain, very pernicious.

If the borrower pays the interest at the day—if he performs his engagement, that very engagement to which the law pretends to oblige him to conform,—the lender, who receives that interest, makes compound interest of course, by lending it out again, unless he chooses rather to expend it: he expects to receive it at the day, or what meant the engagement?—if he fails of receiving it, he is by so much a loser. The borrower, by paying it at the day, is no loser—if he does not pay it at the day, he is by so much a gainer: a pain of disappointment takes place in the case of the one, while no such pain takes place in the case of the other. The cause of him whose contention is to *catch a gain,* is thus preferred to that of him whose contention is to avoid a loss—contrary to the reasonable and useful maxim of that branch of the common law which has acquired the name of equity. The gain, which the law in its tenderness thus bestows on the defaulter, is an encouragement, a reward, which it holds out for breach of faith, for iniquity, for indolence, for negligence.

The loss which it thus throws upon the forbearing lender, is a punishment which it inflicts on him for his forbearance: the power which it gives him of avoiding that loss, by prosecuting the borrower upon the instant of failure, is thus converted into a reward which it holds out to him for his hard-heartedness and rigour. Man is not quite so good as it were to be wished he were; but he would be bad indeed, were he bad on all the occasions where the law, as far as depends on her, has made it his interest so to be.

It may be impossible, say you—it often is impossible, for the borrower to pay the interest at the day;—and you say truly. What is the inference? That the creditor should *not* have it in his power to ruin the debtor for not paying at the day, and that he *should* receive a compensation for the loss occasioned by such *failure.* He *has* it in his power to ruin him, and he has it *not* in his power to obtain such compensation. The judge, were it possible for an arrested debtor to find his way into a judge's chamber instead of a spunging-house, might award a proper respite, suited to the circumstances of the parties. It is not possible: but a respite is purchased, proper or not proper, perhaps at ten times, perhaps at a hundred times, the expense of compound interest, by putting in bail, and fighting the creditor through all the windings of mischievous and unnecessary delay. Of the satisfaction due either for the original failure, or for the subsequent vexation by which it has been aggravated, no part is ever received by the injured creditor; but the instruments of the law receive, perhaps at his expense, perhaps at the debtor's, perhaps ten times, perhaps a hundred times, the amount of that satisfaction. Such is the result of this tenderness of the law.

It is in consequence of such tenderness, that on so many occasions a man, though ever so able, would find himself a loser by paying his just debts—those very debts of which the law has recognized the justice. The man who obeys the dictates of common honesty—the man who does what the law pretends to bid him, is wanting to himself. Hence your regular and securely profitable writs of error in the House of Lords—hence your random and vindictive costs, of one hundred pounds, and two hundred pounds, now and then given in that House. It is natural, and it is some-

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thing, to find in a company of lords a zeal for justice: it is not natural to find, in such a company, a disposition to bend down to the toil of calculation.

LETTER XII.

MAINTENANCE AND CHAMPERTY.

HAVING in the preceding letters had occasion to lay down, and, as I flatter myself, to make good the general principle, that *no man of ripe years and of sound mind, ought, out of loving-kindness to him, to be hindered from making such bargain in the way of obtaining money, as, acting with his eyes open, he deems conducive to his interest*, I will take your leave for pushing it a little farther, and extending the application of it to another class of regulations still less defensible. I mean the antique laws against what are called Maintenance and Champerty.

To the head of *Maintenance*, I think you refer, besides other offences which are not to the present purpose, that of purchasing, upon any terms, any claim, which it requires a suit at law, or in equity, to enforce.

Champerty, which is but a particular modification of this sin of Maintenance, is, I think, the furnishing a man who has such a claim with regard to a real estate, such money as he may have occasion for to carry on such claim, upon the terms of receiving a part of the estate in case of success.

What the penalties are for these offences I do not recollect, nor do I think it worth while hunting for them, though I have Blackstone at my elbow. They are at any rate sufficiently severe to answer the purpose, the rather as the bargain is made void.

To illustrate the mischievousness of the laws by which they have been created, give me leave to tell you a story, which is but too true a one, and which happened to fall within my own observation.

A gentleman of my acquaintance had succeeded, during his minority, to an estate of about £3000 a-year; I won't say where. His guardian, concealing from him the value of the estate, which circumstances rendered it easy for him to do, got a conveyance of it from him during his non-age, for a trifle. Immediately upon the ward's coming of age, the guardian, keeping him still in darkness, found means to get the conveyance confirmed. — Some years afterwards, the ward discovered the value of the inheritance he had been throwing away. Private representations proving, as it may be imagined, ineffectual, he applied to a court of equity. The suit was in some forwardness: the opinion of the ablest counsel highly encouraging, but money there remained none. We all know but too well, that in spite of the unimpeachable integrity of the bench, that branch of justice which is particularly dignified with the name of equity is only for those who can afford to throw away one fortune for the chance of recovering another. Two persons, however, were found, who, between them, were content to defray the expense of the ticket for this lottery, on condition of receiving half the prize. The prospect now became encouraging; — when unfortunately one of the adventurers, in exploring the recesses of the bottomless pit, happened to dig up one of the old statutes against Champerty. This blew up the whole project: however, the defendant, understanding that somehow or other his antagonist had found support, had thought fit in the meantime to propose terms, which the plaintiff, after his support had thus dropped from under him, was very glad to close with. Hereceived, I think it was £3000; and for that he gave up the estate, which was worth about as much yearly, together with the arrears, which were worth about as much as the estate.

Whether, in the barbarous age which gave birth to these barbarous precautions — whether, even under the zenith of feudal anarchy, such fettering regulations could have had reason on their side, is a question of curiosity rather than use. My notion is, that there never was a time — that there never could have been or can be a time — when the pushing of suitors away from court with one hand, while they are beckoned into it with another, would not be a policy equally faithless, inconsistent, and absurd. But what everybody must acknowledge is, that to the times which called forth these laws, and in which alone they could have started up, the present are as opposite as light to darkness. A mischief, in those times it seems but too common, though a mischief not to be cured by such laws, was, that a man would buy a weak claim, in hopes that power might convert it into a strong one, and that the sword of a baron, stalking into court with a rabble of retainers at his heels, might strike terror into the eyes of a judge upon the bench. At present, what cares an English judge for the swords of a hundred barons? Neither fearing nor hoping, hating nor loving, the judge of our days is ready with equal phlegm to administer, upon all occasions, that system, whatever it be, of justice or injustice, which the law has put into his hands. A disposition so consonant to duty could not have then been hoped for: one more consonant is hardly to be wished. Wealth has indeed the monopoly of justice against poverty; and such monopoly it is the direct tendency and necessary effect of regulations like these to strengthen and confirm. But with this monopoly no judge that lives now is at all chargeable. The law created this monopoly: the law, whenever it pleases, may dissolve it.

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I will not, however, so far wander from my subject, as to inquire what measure might have been necessary to afford a full relief to the case of that unfortunate gentleman, any more than to the cases of so many other gentlemen who might be found as unfortunate as he: I will not insist upon so strange and so inconceivable an arrangement, as that of the judge's seeing both parties face to face in the first instance, observing what the facts are in dispute, and declaring, that as the facts should turn out this way or that way, such or such would be his decree. At present, I confine myself to the removal of such part of the mischief as may arise from the general conceit of keeping men out of difficulties, by cutting them off from such means of relief as each man's situation may afford. A spunge in this, as in so many other cases, is the only needful, and only availing remedy: one stroke of it for the musty laws against Maintenance and Champerty: another for the more recent ones against usury. Consider, for example, what would have respectively been the effect of two such strokes, in the case of the unfortunate gentleman I have been speaking of. By the first, if what is called equity has any claim to confidence, he would have got, even after paying off his champerty-usurers, £1500 a-year in land, and about as much in money, instead of getting, and that only by an accident, £3000 once told. By the other, there is no saying to what a degree he might have been benefited. May I be allowed to stretch so far in favour of the law as to suppose, that so small a sum as £500 would have carried him through his suit in the course of about three years? I am sensible that may be thought but a short sum, and this but a short term, for a suit in equity: but, for the purpose of illustration, it may serve as well as a longer. Suppose he had sought this necessary sum in the way of borrowing; and had been so fortunate, or, as the laws against the sin of usury would style it, so unfortunate, as to get it at 200 per cent. He would then have purchased his £6000 a-year at the price of half as much once paid, viz. £3000; instead of selling it at that price. Whether, if no such laws against usury had been in being, he could have got the money, even at that rate, I will not pretend to say: perhaps he might not have got it under ten times that rate, perhaps he might have got it at the tenth part of that rate. Thus far I think we may say, that he might, and probably would, have been the better for the repeal of those laws: but thus far we must say, that it is impossible he should have been the worse. The terms upon which he met with adventurers willing to relieve him, though they come not within that scanty field which the law in the narrowness of its views calls usury, do in the present case, at twenty years' purchase of the £3000 a-year he was content to have sacrificed for such assistance, amount, in effect, to 4000 per cent. Whether it was likely that any man, who was disposed to venture his money at all upon such a chance, would have thought of insisting upon such a rate of interest, I will leave you to imagine: but thus much may be said with confidence, because the fact demonstrates it, that, at a rate not exceeding this, the sum would actually have been supplied. Whatever becomes, then, of the laws against Maintenance and Champerty, the example in question, when applied to the laws against usury, ought, I think, to be sufficient to convince us, that so long as the expense of seeking relief at law stands on its present footing, the purpose of seeking that relief will of itself, independently of every other, afford a sufficient ground for allowing any man, or every man, to borrow money on any terms on which he can obtain it.

Crichoff, in White Russia,
March 1787.

LETTER XIII.

TO DR. SMITH, ON PROJECTS IN ARTS, &c.

SIR,—I forget what son of controversy it was among the Greeks, who having put himself to school to a professor of eminence, to learn what, in those days, went by the name of wisdom, chose an attack upon his master for the first public specimen of his proficiency. This specimen, whatever entertainment it might have afforded to the audience, afforded, it may be supposed, no great satisfaction to the master: for the thesis was, that the pupil owed him nothing for his pains. For my part, being about to show myself in one respect as ungrateful as the Greek, it may be a matter of prudence for me to look out for something like candour, by way of covering to my ingratitude: instead, therefore, of pretending to owe you nothing, I shall begin with acknowledging that, as far as your track coincides with mine, I should come much nearer the truth were I to say I owed you everything. Should it be my fortune to gain any advantage over you, it must be with weapons which you have taught me to wield, and with which you yourself have furnished me; for, as all the great standards of truth which can be appealed to in this line, owe, as far as I can understand, their establishment to you, I can see scarce any other way of convicting you of any error or oversight, than by judging you out of your own mouth.

In the series of Letters to which this will form a sequel, I had travelled nearly thus far in my researches into the policy of the laws fixing the rate of interest, combating such arguments as fancy rather than observation had suggested to my view, when, on a sudden, recollection presented me with your formidable image, bestriding the ground over

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which I was travelling pretty much at my ease, and opposing the shield of your authority to any arguments I could produce.

It was a reflection mentioned by Cicero as affording him some comfort, that the employment his talents till that time had met with, had been chiefly on the defending side. How little soever blest on any occasion with any portion of his eloquence, I may on the present occasion, however, indulge myself with a portion of what constituted his comfort: for if I presume to contend with you, it is only in defence of what I look upon as not only an innocent, but a most meritorious race of men, who are so unfortunate as to have fallen under the rod of your displeasure. I mean *projectors:* under which invidious name I understand you to comprehend, in particular, all such persons as, in the pursuit of wealth, strike out into any new channel, and more especially into any channel of invention.

It is with the professed view of checking, or rather of crushing these adventurous spirits, whom you rank with "prodigals," that you approve of the laws which limit the rate of interest, grounding yourself on the tendency they appear to you to have to keep the capital of the country out of two such different sets of hands.

The passage I am speaking of is in the fourth chapter of your second book, volume the second of the 8vo edition of 1784. "The legal rate," you say, "it is to be observed, though it ought to be somewhat above, ought not to be much above, the lowest market rate. If the legal rate of interest in Great Britain, for example, was fixed so high as eight or ten per cent., the greater part of the money which was to be lent, would be lent to prodigals and projectors, who alone would be willing to give the high interest. Sober people, who will give for the use of money no more than a part of what they are likely to make by the use of it, would not venture into the competition. A great part of the capital of the country would thus be kept out of the hands which were most likely to make a profitable and advantageous use of it, and thrown into those which were most likely to waste and destroy it. Where the legal interest, on the contrary, is fixed but a very little above the lowest market rate, sober people are universally preferred as borrowers, to prodigals and projectors. The person who lends money, gets nearly as much interest from the former, as he dares to take from the latter, and his money is much safer in the hands of the one set of people, than in those of the other. A great part of the capital of the country is thus thrown into the hands in which it is most likely to be employed with advantage."

It happens, fortunately for the side you appear to have taken, and as unfortunately for mine, that the appellative which the custom of the language has authorized you, and which the poverty and perversity of the language has in a manner forced you, to make use of, is one which, along with the idea of the sort of persons in question, conveys the idea of reprobation as indiscriminately and deservedly applied to them. With what justice or consistency, or by the influence of what causes, this stamp of indiscriminate reprobation has been thus affixed, it is not immediately necessary to inquire; but that it does stand thus affixed, you and everybody else, I imagine, will be ready enough to allow. This being the case, the question stands already decided, in the first instance at least, if not irrevocably, in the judgments of all those who, unable or unwilling to be at the pains of analyzing their ideas, suffer their minds to be led captive by the tyranny of sounds; that is, I doubt, of by far the greater proportion of those whom we are likely to have to judge us. In the conceptions of all such persons, to ask whether it be fit to restrain projects and projectors, will be as much as to ask whether it be fit to restrain rashness, and folly, and absurdity, and knavery, and waste.

Of prodigals I shall say no more at present. I have already stated my reasons for thinking that it is not among them that we are to look for the natural customers for money at high rates of interest. As far as those reasons are conclusive, it will follow, that of the two sorts of men you mention as proper objects of the burthen of these restraints—prodigals and projectors—that burthen falls exclusively on the latter. As to these, what your definition is of projectors, and what description of persons you meant to include under the censure conveyed by that name, might be material for the purpose of judging of the propriety of that censure, but makes no difference in judging of the propriety of the law which that censure is employed to justify. Whether you yourself, were the several classes of persons made to pass before you in review, would be disposed to pick out this or that class, or this and that individual, in order to exempt them from such censure, is what for that purpose we have no need to inquire. The law, it is certain, makes no such distinctions; it falls with equal weight, and with all its weight, upon all those persons, without distinction, to whom the term *projectors*, in the most unpartial and extensive signification of which it is capable, can be applied. It falls, at any rate (to repeat some of the words of my former definition,) upon all such persons as, in the pursuit of wealth, or even of any other object, endeavour by the assistance of wealth to strike into any channel of invention. It falls upon all such persons as, in the cultivation of any of those arts which have been by

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way of eminence termed *useful*, direct their endeavours to any of those departments in which their utility shines most conspicuous and indubitable: upon all such persons as, in the line of any of their pursuits, aim at anything that can be called *improvement*, whether it consist in the production of any new article adapted to man's use, or in the meliorating the quality, or diminishing the expense, of any of those which are already known to us. It falls, in short, upon every application of the human powers in which ingenuity stands in need of wealth for its assistant.

High and extraordinary rates of interest, how little soever adapted to the situation of the prodigal, are certainly, as you very justly observe, particularly adapted to the situation of the projector; — not, however, to that of the imprudent projector only, nor even of his case more than another's, but to that of the prudent and well-grounded projector, if the existence of such a being were to be supposed. Whatever be the prudence or other qualities of the project — in whatever circumstance the novelty of it may lie — it has this circumstance against it, viz. that it is new. But the rates of interest, the highest rates allowed, are, as you expressly say they are, and as you would have them to be, adjusted to the situation which the sort of trader is in whose trade runs in the old channels, and to the best security which such channels can afford. But in the nature of things, no new trade — no trade carried on in any new channel, can afford a security equal to that which may be afforded by a trade carried on in any of the old ones: in whatever light the matter might appear to perfect intelligence, — in the eye of every prudent person, exerting the best powers of judging which the fallible condition of the human faculties affords, the novelty of any commercial adventure will oppose a chance of ill success, superadded to every one which could attend the same or any other adventure, already tried, and proved to be profitable by experience.

The limitation of the profit that is to be made by lending money to persons embarked in trade, will render the moneyed man more anxious, you may say, about the goodness of his security, and accordingly more anxious to satisfy himself respecting the prudence of a project, in the carrying on of which the money is to be employed, than he would be otherwise: and in this way it may be thought that these laws *have* a tendency to pick out the good projects from the bad, and favour the former at the expense of the latter. The first of these positions I admit; but I can never admit the consequence to follow. A prudent man — (I mean nothing more than a man of ordinary prudence) — a prudent man, acting under the sole governance of prudential motives, I still say, will not, in these circumstances, pick out the good projects from the bad; for he will not meddle with projects at all. He will pick out old established trades from all sorts of projects, good and bad; for with a new project, be it ever so promising, he never will have anything to do. By every man that has money, five per cent., or whatever be the highest legal rate, is at all times, and always will be, to be had upon the very best security that the best and most prosperous old-established trade can afford. Traders in general, I believe it is commonly understood, are well enough inclined to enlarge their capital, as far as all the money they can borrow at the highest legal rate, while that rate is so low as five per cent., will enlarge it. How it is possible, therefore, for a project, be it ever so promising, to afford to a lender at any such rate of interest, terms equally advantageous upon the whole with those he might be sure of obtaining from an old-established business, is more than I can conceive. Loans of money may certainly chance, now and then, to find their way into the pockets of projectors as well as of other men; but when this happens, it must be through incautiousness, or friendship, or the expectation of some collateral benefit, and not through any idea of the advantageousness of the transaction in the light of a pecuniary bargain.

I should not expect to see it alleged that there is anything that should render the number of well-grounded projects, in comparison of the ill-grounded, less in time future, than it has been in time past. I am sure, at least, that I know of no reasons why it should be so, though I know of some reasons, which I shall beg leave to submit to you by and by, which appear to me pretty good ones, why the advantage should be on the side of futurity. But unless the stock of well-grounded projects is already spent, and the whole stock of ill-grounded projects that ever were possible are to be looked for exclusively in the time to come, the censure you have passed on projectors, measuring still the extent of it by that of the operation of the laws in the defence of which it is employed, looks as far backward as forward: it condemns as rash and ill-grounded, all those projects by which our species have been successively advanced from that state in which acorns were their food, and raw hides their clothing, to the state in which it stands at present: for think, Sir, let me beg of you, whether whatever is now the *routine* of trade was not, at its commencement, *project?* — whether whatever is now *establishment* was not, at one time, innovation?

How it is that the tribe of well-grounded projects, and of prudent projectors (if by this time I may have your leave for applying this epithet to some at least among the pro-

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jectors of time past,) have managed to struggle through the obstacles which the laws in question have been holding in their way, it is neither easy to know, nor necessary to inquire. Manifest enough, I think, it must be by this time, that difficulties, and those not inconsiderable ones, those laws must have been holding up in the way of projects of all sorts, of improvement (if I may say so) in every line, so long as they have had existence: reasonable, therefore, it must be to conclude, that had it not been for these discouragements, projects of all sorts — well-grounded and successful ones, as well as others, would have been more numerous than they have been: and that accordingly, on the other hand, as soon, if ever, as these discouragements shall be removed, projects of all sorts, and among the rest well-grounded and successful ones, will be more numerous than they would otherwise have been: in short, that as, without these discouragements, the progress of mankind in the career of prosperity would have been greater than it has been under them in time past; so, were they to be removed, it would be at least proportionably greater in time future.

That I had done you no injustice in assigning to your idea of projectors so great a latitude, and that the unfavourable opinion you have professed to entertain of them is not confined to the above passage, might be made, I think, pretty apparent, if it be material, by another passage in the tenth chapter of your first book:* "The establishment of any new manufacture, of any new branch of commerce, or of any new practice in agriculture," all these you comprehend by name under the list of "*projects:*" of every one of them you observe, that "it is a speculation from which the *projector* promises himself extraordinary profits. These profits (you add) are sometimes *very great*, and sometimes, *more frequently perhaps*, they are *quite otherwise:* but in general they bear no regular proportion to those of other old trades in the neighbourhood. If the project succeeds, they are commonly at first very high. When the trade or practice becomes thoroughly established and well known, the competition reduces them to the level of other trades." But on this head I forbear to insist: nor should I have taken this liberty of giving you back your own words, but in the hope of seeing some alteration made in them in your next edition, should I be fortunate enough to find my sentiments confirmed by yours. In other respects, what is essential to the public is, what the error is in the sentiments entertained, not who it is that entertains them.

I know not whether the observations which I have been troubling you with will be thought to need, or whether they will be thought to receive, any additional support from those comfortable positions, of which you have made such good and such frequent use concerning the constant tendency of mankind to get forward in the career of prosperity — the prevalence of prudence over imprudence, in the sum of private conduct at least — and the superior fitness of individuals for managing their own pecuniary concerns, of which they know the particulars and the circumstances, in comparison of the legislator, who can have no such knowledge. I will make the experiment, for so long as I have the mortification to see you on the opposite side, I can never think the ground I have taken strong enough, while anything remains that appears capable of rendering it still stronger.

"With regard to misconduct, the number of prudent and successful undertakings," you observe,† "is everywhere much greater than that of injudicious and unsuccessful ones. After all our complaints of the frequency of bankruptcies, the unhappy men who fall into this misfortune make but a very small part of the whole number engaged in trade and all other sorts of business; not much more, perhaps, than one in a thousand."

'Tis in support of this position that you appeal to history for the constant and uninterrupted progress of mankind, in our island at least, in the career of prosperity: calling upon any one who should entertain a doubt of the fact, to divide the history into any number of periods, from the time of Cæsar's visit down to the present: proposing, for instance, the respective eras of the Restoration, the accession of Elizabeth, that of Henry VII., the Norman Conquest, and the Heptarchy; and putting it to the sceptic to find out, if he can, among all these periods, any one at which the condition of the country was not more prosperous than at the period immediately preceding it: spite of so many wars, and fires, and plagues, and all other public calamities, with which it has been at different times afflicted, whether by the hand of God, or by the misconduct of the sovereign. No very easy task, I believe: the fact is too manifest for the most jaundiced eye to escape seeing it. But what, and whom, are we to thank for it, but projects and projectors?

"No," I think I hear you saying, "I will not thank projectors for it; I will rather thank the laws, which, by fixing the rates of interest, have been exercising their vigilance in repressing the temerity of projectors, and preventing their imprudence from making those defalcations from the sum of national prosperity, which it would not have failed to make had it been left free. If, during all these periods, that adventurous race of men had

* Edit. 1784, 8vo, p. 177.

† B. II. ch. iii. edit. 8vo, 1784, vol. ii. p. 20.

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been left at liberty by the laws to give full scope to their rash enterprises, the increase of national prosperity during these periods might have afforded some ground for regarding them in a more favourable point of view. But the fact is, that their activity has had these laws to check it; without which checks you must give me leave to suppose that the current of prosperity, if not totally stopped or turned the other way, would at any rate have been more or less retarded. Here, then," you conclude, "lies the difference between us. What you look upon as the cause of the increase about which we are both agreed, I look upon as an obstacle to it; and what you look upon as the obstacle, I look upon as the cause."

Instead of starting this as a sort of plea that might be urged by you, I ought, perhaps, rather to have mentioned it as what might be urged by some people in your place; for as I do not imagine your penetration would suffer you to rest satisfied with it, still less can I suppose that, if you were not, your candour would allow you to make use of it as if you were.

To prevent your resting satisfied with it, the following considerations would, I think, be sufficient.

In the first place, of the seven periods which you have pitched upon, as so many stages for the eye to rest at in viewing the progress of prosperity, it is only during the three last that the country has had the benefit, if such we are to call it, of these laws; for it is to the reign of Henry VIII. that we owe the first of them.

Here a multitude of questions might be started: — whether the curbing of projectors formed any part of the design of that first statute, or whether the views of it were not wholly confined to the reducing the gains of that obnoxious and envied class of men, the money-lenders? — whether projectors have been most abundant before that statute, or since that statute? — and whether the nation has suffered, as you might say — benefited, as I should say — most by them, upon the whole, during the former period or the latter? All these discussions, and many more that might be started, I decline engaging in, as more likely to retard than to forward our coming to any agreement concerning the main question.

In the next place, I must here take the liberty of referring you to the proof which I think I have already given, of the proposition that the restraints in question could never have had the effect, in any degree, of lessening the proportion of bad projects to good ones, but only of diminishing, as far as their influence may have extended, the total number of projects, good and bad together. Whatever, therefore, was the general tendency of the projecting spirit previously to the first of these laws, such it must have remained ever since, for any effect which they could have had in purifying and correcting it.

But what may appear more satisfactory, perhaps, than both the above considerations, and may afford us the best help towards extricating ourselves from the perplexity which the plea I have been combating (and which I thought it necessary to bring to view as the best that could be urged) seems much better calculated to plunge us into than bring us out of, is, the consideration of the small effect which the greatest waste that can be conceived to have been made within any compass of time by injudicious projects, can have had on the sum of prosperity, even in the estimation of those whose opinion is most unfavourable to projectors, in comparison of the effect which, within the same compass of time, must have been produced by *prodigality*.

Of the two causes, and only two causes which you mention, as contributing to retard the accumulation of national wealth, as far as the conduct of individuals is concerned, projecting, as I observed before, is the one, and prodigality is the other: but the detriment which society can receive even from the concurrent efficacy of both these causes, you represent on several occasions as inconsiderable, and, if I do not misapprehend you, too inconsiderable, either to need, or to warrant, the interposition of government to oppose it. Be this as it may, with regard to projecting and prodigality taken together — with regard to prodigality at least, I am certain I do not misapprehend you. On this subject you ride triumphant, and chastise the "impertinence and presumption of kings and ministers," with a tone of authority which it required a courage like yours to venture upon, and a genius like yours to warrant a man to assume.* After drawing the parallel between private thrift and public profusion — "It is," you conclude, "the highest impertinence and presumption, therefore, in kings and ministers *to pretend to watch over the economy of private people*, and to restrain their expense, either by sumptuary laws, or by prohibiting the importation of foreign luxuries. They are themselves always, and without exception, the greatest spendthrifts in the society. Let them look well after their own expense, and they may safely trust private people with theirs. If their own extravagance does not ruin the state, that of their subjects never will."

That the employing the expedients you mention for restraining prodigality, is indeed generally, perhaps even without exception, improper, and in many cases even ridiculous, I agree with you: nor will I here step aside

* B. II. ch. iii. vol. ii. p. 27, edit. 8vo. 1784.

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from my subject to defend from that imputation another mode suggested in a former part of these papers. But however presumptuous and impertinent it may be for the sovereign to attempt in any way to check by legal restraints the *prodigality* of individuals, to attempt to check their *bad management* by such restraints, seems abundantly more so. To err in the way of prodigality is the lot — though, as you well observe, not of *many* men, in comparison of the whole mass of mankind — yet at least of *any* man: the stuff fit to make a prodigal of is to be found in every alehouse, and under every hedge. But even to *err* in the way of projecting, is the lot only of the privileged few. Prodigality, though not so common as to make any very material drain from the general mass of wealth, is however too common to be regarded as a mark of distinction or as a singularity. But the stepping aside from any of the beaten paths of traffic, *is* regarded as a singularity — as serving to distinguish a man from other men. Even where it requires no genius, no peculiarity of talent — as where it consists in nothing more than the finding out a new market to buy or sell in, it requires, however, at least a degree of courage, which is not to be found in the common herd of men. What shall we say of it, where, in addition to the vulgar quality of courage, it requires the rare endowment of genius, as in the instance of all those successive enterprises by which arts and manufactures have been brought from their original nothing to their present splendour? Think how small a part of the community these must make, in comparison of the race of prodigals — of that very race which, were it only on account of the smallness of its number, would appear too inconsiderable to you to deserve attention. Yet prodigality is essentially and necessarily hurtful, as far as it goes, to the opulence of the state: projecting is so only by accident. Every prodigal, without exception, impairs — by the very supposition impairs, if he does not annihilate — his fortune. But it certainly is not every projector that impairs his: it is not every projector that would have done so, had there been none of those wise laws to hinder him: for the fabric of national opulence — that fabric of which you proclaim, with so generous an exultation, the continual increase — that fabric, in every apartment of which, innumerable as they are, it required the reprobated hand of a projector to lay the first stone, has required some hands at least to be employed, and successfully employed. When, in comparison of the number of prodigals, which is too inconsiderable to deserve notice, the number of projectors of all kinds is so much more inconsiderable — and when, from this inconsiderable number, must be deducted the not inconsiderable proportion of successful projectors — and from this remainder again, all those who can carry on their projects without need of borrowing, — think whether it be possible that this last remainder could afford a multitude, the reducing of which would be an object deserving the interposition of government by its magnitude, even taking for granted that it were an object proper in its nature?

If it be still a question whether it be worth while for government, by its *reason*, to attempt to controul the conduct of men visibly and undeniably under the dominion of *passion*, and acting under that dominion, contrary to the dictates of their own reason, — in short, to effect what is acknowledged to be their better judgment, against what everybody, even themselves, would acknowledge to be their worse, — is it endurable that the legislator should by violence substitute his own pretended reason, the result of a momentary and scornful glance, the offspring of wantonness and arrogance, much rather than of social anxiety and study, in the place of the humble reason of individuals, binding itself down with all its force to that very object which he pretends to have in view? Nor let it be forgotten, that, on the side of the individual in this strange competition, there is the most perfect and minute knowledge and information which interest — the whole interest of a man's reputation and fortune, can insure: on the side of the legislator, the most perfect ignorance. All that he knows all that he can know, is, that the enterprise is a *project*, which, merely because it is susceptible of that obnoxious name, he looks upon as a sort of cock, for him, in childish wantonness, to shie at. Shall the blind lead the blind? is a question that has been put of old to indicate the height of folly: but what then shall we say of him who, being necessarily blind, insists on leading, in paths he never trode in, those who can see?

It must be by some distinction too fine for my conception, if you clear yourself from the having taken, on another occasion, but on the very point in question, the side, on which it would be my ambition to see you fix: —

"What is the species of domestic industry which his capital can employ, and of which the produce is likely to be of the greatest value, every individual," you say,* "it is evident, can, in his local situation, judge much better than any statesman or lawgiver can do for him. The statesman, who should attempt to direct private people in what manner they ought to employ their capitals, would not only load himself with a most unnecessary attention, but assume an authority which could safely be trusted, not only to no single person, but to no council or senate whatso-

* B. IV. ch. ii. vol. ii. p. 182, edit. 8vo.

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ever, and which would nowhere be so dangerous as in the hands of a man who had folly and presumption enough to fancy himself fit to exercise it.

"To give the monopoly of the home market to the produce of domestic industry in any particular art or manufacture, is in some measure to direct private people in what manner they ought to employ their capitals, and must in almost all cases be either a useless or a hurtful regulation."—Thus far you: and I add,—to limit the legal interest to a rate at which the carriers on of the oldest and best-established and least hazardous trades are always glad to borrow, is to give the monopoly of the money-market to those traders, as against the projectors of new-imagined trades, not one of which but, were it only from the circumstance of its novelty, must, as I have already observed, appear more hazardous than the old.

These, in comparison, are but inconclusive topics. I touched upon them merely as affording what appeared to me the only shadow of a plea that could be brought in defence of the policy I am contending against. I come back, therefore, to my first ground, and beg you once more to consider, whether, of all that host of manufactures, which we both exult in as the causes and ingredients of national prosperity, there be a single one that could have existed at first but in the shape of a project. But if a regulation, the tendency and effect of which is merely to check projects in as far as they are projects, without any sort of tendency, as I have shown, to weed out the bad ones, is defensible in its present state of imperfect efficacy, it should not only have been defensible, but much more worthy of our approbation, could the efficacy of it have been so far strengthened and completed as to have opposed from the beginning an unsurmountable bar to all sorts of projects whatsoever;—that is to say, if, stretching forth its hand over the first rudiments of society, it had confined us, from the beginning, to mud for our habitations, to skins for our clothing, and to acorns for our food.

I hope you may by this time be disposed to allow me, that we have not been ill served by the projects of time past. I have already intimated, that I could not see any reason why we should apprehend our being worse served by the projects of time future. I will now venture to add, that I think I do see reason why we should expect to be still better and better served by these projects, than by those: I mean, better upon the whole, in virtue of the reduction which experience, if experience be worth anything, should make in the proportion of the number of the ill-grounded and unsuccessful, to that of the well-grounded and successful ones.

The career of art, the great road which receives the footsteps of projectors, may be considered as a vast, and perhaps unbounded plain, bestrewed with gulphs such as Curtius was swallowed up in. Each requires a human victim to fall into it ere it can close; but when it once closes, it closes to open no more, and so much of the path is safe to those who follow. If the want of perfect information of former miscarriages renders the reality of human life less happy than this picture, still the similitude must be acknowledged: and we see at once the only plain and effectual method for bringing that similitude still nearer and nearer to perfection: I mean, the framing the history of the projects of time past, and (what may be executed in much greater perfection, were but a finger held up by the hand of government) the making provision for recording, and collecting, and publishing as they are brought forth, the race of those with which the womb of futurity is still pregnant. But to pursue this idea, the execution of which is not within my competence, would lead me too far from the purpose.

Comfortable it is to reflect, that this state of continually-improving security is the natural state, not only of the road to opulence, but of every other track of human life. In the war which industry and ingenuity maintain with fortune, past ages of ignorance and barbarism form the forlorn hope, which has been detached in advance, and made a sacrifice of for the sake of future. The golden age, it is but too true, is not the lot of the generation in which we live: but if it is to be found in any part of the track marked out for human existence, it will be found, I trust, not in any part which is past, but in some part which is to come.

But to return to the laws against usury, and their restraining influence on projectors. I have made it, I hope, pretty apparent, that these restraints have no power or tendency to pick out bad projects from the good. Is it worth while to add, which I think I may do with some truth, that the tendency of them is rather to pick the good out from the bad? Thus much at least may be said, and it comes to the same thing, that there is one case in which, be the project what it may, they may have the effect of checking it, and another in which they can have no such effect; and that the first has for its accompaniment, and that a necessary one, a circumstance which has a strong tendency to separate and discard every project of the injudicious stamp, but which is wanting in the other case: I mean, in a word, the *benefit of discussion*.

It is evident enough, that upon all such projects, whatever be their nature, as find funds sufficient to carry them on, in the hands of him whose invention gave them birth, these laws are perfectly, and if by this time you will allow me to say so, very happily, with-

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out power. But for these there has not necessarily been any other judge, prior to experience, than the inventor's own partial affection. It is not only not necessary that they should have had, but it is natural enough that they should not have had, any such judge; since in most cases the advantage to be expected from the project depends upon the exclusive property in it, and consequently upon the concealment of the principle. Think, on the other hand, how different is the lot of that enterprise which depends upon the good opinion of another man; that other, a man possessed of the wealth which the projector wants, and before whom necessity forces him to appear in the character of a suppliant at least: happy if, in the imagination of his judge, he adds not to that degrading character, that of a visionary enthusiast or an impostor! At any rate, there are in this case, two wits set to sift into the merits of the project, for one which was employed upon that same task in the other case: and of these two, there is one whose prejudices are certainly not most likely to be on the favourable side. True it is, that in the jumble of occurrences, an over-sanguine projector may stumble upon a patron as over-sanguine as himself; and the wishes may bribe the judgment of the one, as they did of the other. The opposite case, however, you will allow, I think, to be by much the more natural. Whatever a man's wishes may be for the success of an enterprise not yet his own, his fears are likely to be still stronger. That same pretty generally implanted principle of vanity and self-conceit, which disposes most of us to overvalue each of us his own conceptions, disposes us, in a proportionable degree, to undervalue those of other men.

Is it worth adding, though it be undeniably true, that could it even be proved by ever so uncontrovertible evidence, that from the beginning of time to the present day, there never was a project that did not terminate in the ruin of its author; not even from such a fact as this, could the legislator derive any sufficient warrant, so much as for wishing to see the spirit of projects in any degree repressed? The discouraging motto, *Sic vos non vobis*, may be matter of serious consideration to the individual, but what is it to the legislator? What general, let him attack with ever so superior an army, but knows that hundreds, or perhaps thousands, must perish at the first onset? Shall he, for that consideration alone, lie inactive in his lines? "Every man for himself—but God" adds the proverb (and it might have added the general, and the legislator, and all other public servants) "for us all." Those sacrifices of individual to general welfare, which on so many occasions are made by third persons against men's wills, shall the parties themselves be restrained from making, when they do it of their own choice? To tie men neck and heels, and throw them into the gulphs I have been speaking of, is altogether out of the question: but if at every gulph a Curtius stands mounted and caparisoned, ready to take the leap, is it for the legislator, in a fit of old-womanish tenderness, to pull him away? Laying even public interest out of the question, and considering nothing but the feelings of the individuals immediately concerned, a legislator would scarcely do so, who knew the value of hope, "the most precious gift of heaven."

Consider, Sir, that it is not with the invention-lottery (that great branch of the project-lottery, for the sake of which I am defending the whole, and must continue so to do until you or somebody else can show me how to defend it on better terms,) it is not, I say, with the invention-lottery, as with the mine-lottery, the privateering-lottery, and so many other lotteries which you speak of, and in no instance, I think, very much to their advantage. In these lines, success does not, as in this, arise out of the embers of ill-success, and thence propagate itself, by a happy contagion, perhaps to all eternity. Let Titius have found a mine, it is not the more easy, but by so much the less easy, for Sempronius to find one too: let Titius have made a capture, it is not the more easy, but by so much the less easy, for Sempronius to do the like. But let Titius have found out a new dye, more brilliant or more durable than those in use—let him have invented a new and more convenient machine, or a new and more profitable mode of husbandry,—a thousand dyers, ten thousand mechanics, a hundred thousand husbandmen, may repeat and multiply his success: and then, what is it to the public though the fortune of Titius, or of his usurer, should have sunk under the experiment?

Birmingham and Sheffield are pitched upon by you as examples, the one of a projecting town, the other of an unprojecting one.* Can you forgive my saying, I rather wonder that this comparison of your own choosing did not suggest some suspicions of the justice of the conceptions you had taken up to the disadvantage of projectors. Sheffield is an old oak: Birmingham but a mushroom. What if we should find the mushroom still vaster and more vigorous than the oak? Not but the one as well as the other, at what time soever planted, must equally have been planted by projectors: for though Tubal Cain himself were to be brought post from Armenia to plant Sheffield, Tubal Cain himself was as arrant a projector in his day, as ever Sir Thomas Lombe was, or Bishop Blaise. But Birmingham, it seems, claims, in common parlance, the title of a projecting town, to the exclusion of the

* B. I. ch. x. vol. i. p. 176, edit. 8vo, 1784.

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other, because, being but of yesterday, the spirit of project smells fresher and stronger there than elsewhere.

When the odious sound of the word *projector* no longer tingles in your ears, the race of men thus stigmatized do not always find you their enemy. Projects, even under the name of "dangerous and expensive experiments," are represented as not unfit to be encouraged, even though monopoly be the means: and the monopoly is defended in that instance, by its similarity to other instances in which the like means are employed to the like purpose.

"When a company of merchants undertake at their own risk and expense to establish a new trade with some remote and barbarous nation, it may not be unreasonable," you observe, "to incorporate them into a joint-stock company, and to grant them, in case of their success, a monopoly of the trade for a certain number of years. It is the easiest and most natural way in which the state can recompense them, for hazarding a dangerous and expensive experiment, of which the public is afterwards to reap the benefit. A temporary monopoly of this kind may be vindicated upon the same principles upon which a like monopoly of a new machine is granted to its inventor, and that of a new book to its author."

Private respect must not stop me from embracing this occasion of giving a warning which is so much needed by mankind. If so original and independent a spirit has not been always able to save itself from being drawn aside by the fascination of sounds into the paths of vulgar prejudice, how strict a watch ought not men of common mould to set over their judgments, to save themselves from being led astray by similar delusions!

I have sometimes been tempted to think, that were it in the power of laws to put *words* under proscription, as it is to put *men*, the cause of inventive industry might perhaps derive scarcely less assistance from a bill of attainder against the words *project* and *projectors*, than it has derived from the act authorizing the grant of patents. I should add, however, for a time: for even then the envy, and vanity, and wounded pride, of the uningenious herd, would sooner or later infuse their venom into some other word, and set it up as a new tyrant, to hover, like its predecessor, over the birth of infant genius, and crush it in its cradle.

Will not you accuse me of pushing malice beyond all bounds, if I bring down against you so numerous and respectable a body of men as the members of the *Society for the Encouragement of Arts?* I do not, must not, care: for you command too much respect to have any claim to mercy. At least you will not accuse me of spiriting up against you barbarian enemies, and devoting you to the vengeance of Cherokees and Chicasaws.

Of that popular institution, the very professed and capital object is the encouragement of projects, and the propagating of that obnoxious breed, the crushing of which you commend as a fit exercise for the arm of power. But if it be right to crush the acting malefactors, it would be downright inconsistency not to crush at the same time, or rather not to begin with crushing, these their hirers and abettors. Thank, then, their inadvertence, or their generosity, or their prudence, if their beadle has not yet received orders to burn in ceremony, as a libel on the Society, a book that does honour to the age.

After having had the boldness to accuse so great a master of having fallen unawares into an error, may I take the still farther liberty of setting conjecture to work to account for it? Scarce any man, perhaps no man, can push the work of creation, in any line, to such a pitch of completeness as to have gone through the task of examining with his own eyes into the grounds of every position without exception, which he has had occasion to employ. You heard the public voice, strengthened by that of law, proclaiming all round you, that usury was a sad thing, and usurers a wicked and pernicious set of men: you heard from one at least of those quarters, that projectors were either a foolish and contemptible race, or a knavish and destructive one. Hurried away by the throng, and taking, very naturally, for granted, that what everybody said must have some ground for it, you have joined the cry, and added your suffrage to the rest. Possibly, too, among the crowd of projectors which the lottery of occurrences happened to present to your observation, the prejudicial sort may have borne such a proportion to the beneficial, or shown themselves in so much stronger colours, as to have given the popular notion a firmer hold in your judgment, than it would have had, had the contrary proportion happened to present itself to your notice. To allow no more weight to examples that fall close under our eyes, than to those which have fallen at ever so great a distance — to suffer the judgment on no occasion to indulge itself in the licence of a too hasty and extensive generalization — not to give any proposition footing there, till after all such defalcations have been made as are necessary to reduce it within the limits of rigid truth, — these are laws, the complete observance whereof forms the ultimate, and hitherto, perhaps for ever, ideal term of human wisdom.

You have defended against unmerited obloquy two classes of men — the one innocent at least, the other highly useful: the spreaders of English arts in foreign climes, and those whose industry exerts itself in distributing that necessary commodity which is called by

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the way of eminence the staff of life.* May I flatter myself with having succeeded at last in my endeavours to recommend to the same powerful protection, two other highly useful and equally persecuted sets of men — usurers and projectors? Yes: I will, for the moment at least, indulge so flattering an idea; and in pursuance of it, leaving usurers, for whom I have said enough already, I will consider myself as joined now with you in the same commission, and thinking with you of the best means of relieving the projector from the load of discouragement laid on him by these laws, in so far as the pressure of them falls particularly upon him. In my own view of the matter, indeed, no temperament, no middle course, is either necessary or proper: the only perfectly effectual, is the only perfectly proper remedy — a spunge. But as nothing is more common with mankind than to give opposite receptions to conclusions flowing with equal necessity from the same principle, let us accommodate our views to that contingency.

According to this idea, the object, as far as confined to the present case, should be, to provide, in favour of projectors only, a dispensation from the rigour of the anti-usurious laws; — such, for instance, as is enjoyed by persons engaged in the carrying trade, in virtue of the indulgence given to loans made on the footing of *respondentia* or bottomry. As to abuse, I see not why the danger of it should be greater in this case than in those. Whether a sum of money be embarked, or not embarked, in such or such a new manufacture on land, should not, in its own nature, be a fact much more difficult to ascertain, than whether it be embarked, or not embarked, in such or such a trading adventure by sea: and in the one case as in the other, the payment of the interest, as well as the repayment of the principal, might be made to depend upon the success of the adventure. To confine the indulgence to new undertakings, the having obtained a patent for some invention, and the continuance of the term of the patent, might be made conditions of the allowance given to the bargain: to this might be added affidavits expressive of the intended application, and bonds, with sureties, conditioned for the performance of the intention so declared; to be registered in one of the patent-offices, or elsewhere. After this, affidavits once a-year, or oftener, during the subsistence of the contract, declaring what has been done in execution of it.

If the leading-string is not yet thought tight enough, boards of controul might be instituted to draw it tighter. Then opens a scene of vexation and intrigue: waste of time consumed in courting the favour of the members of the board: waste of time in opening their understandings, clenched perhaps by ignorance, at any rate by disdain and self-sufficiency, and vanity, and pride: the favour (for pride will make it a favour) granted to skill in the arts of self-recommendation and cabal, devoid of inventive merit, and refused to naked merit unadorned by practice in those arts: waste of time on the part of the persons themselves engaged in this impertinent inquiry: waste of somebody's money in paying them for this waste of time. All these may be necessary evils, where the money to be bestowed is public money: how idle where it is the party's own! I will not plague you, nor myself, with inquiring of whom shall be composed this board of nurses to grown gentlemen: were it only to cut the matter short, one might name at once the committees of the Society of Arts. There you have a body of men ready trained in the conduct of inquiries, which resemble that in question in every circumstance but that which renders it ridiculous: the members or representatives of this democratic body would be as likely, I take it, to discharge such a trust with fidelity and skill, as any aristocracy that could be substituted in their room.

Crichoff, in White Russia,
March 1787.

* B. IV. ch. viii. vol. ii. p. 514, *et alibi*, edit. 8vo. 1784.

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A MANUAL

OF

POLITICAL ECONOMY:

NOW

FIRST EDITED FROM THE MSS.

OF

JEREMY BENTHAM.

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MANUAL OF POLITICAL ECONOMY.

CHAPTER I.

INTRODUCTION.*

POLITICAL ECONOMY is at once a *science* and an *art*. The value of the science has for its efficient cause and measure, its subserviency to the art.†

According to the principle of utility in every branch of the art of legislation, the object or end in view should be the production of the maximum of happiness in a given time in the community in question.

In the instance of this branch of the art, the object or end in view should be the production of that maximum of happiness, in so far as this more general end is promoted by the production of the maximum of wealth and the maximum of population.

The practical questions, therefore, are — How far the measures respectively suggested by these two branches of the common end agree? — how far they differ, and which requires the preference? — how far the end in view is best promoted by individuals acting for themselves? and in what cases these ends may be best promoted by the hands of government?

Those cases in which, and those measures or operations by which, the end is promoted by individuals acting for themselves, and without any special interference exercised with this special view on the part of government, beyond the distribution made and maintained, and the protection afforded by the civil and penal branches of the law, may be said to arise *sponte acta*.

What the legislator and the minister of the interior have it in their power to do towards increase either of wealth or population, is as nothing in comparison with what is done of course, and without thinking of it, by the judge, and his assistant the minister of police.

The cases in which, and the measures by which, the common end may be promoted by the hands of government, may be termed *agenda*.

With the view of causing an increase to take place in the mass of national wealth, or with a view to increase of the means either of subsistence or enjoyment, without some special reason, the general rule is, that nothing ought to be done or attempted by government. The motto, or watchword of government, on these occasions, ought to be — *Be quiet*.

For this quietism there are two main reasons: — 1. Generally speaking, any interference for this purpose on the part of government is *needless*. The wealth of the whole community is composed of the wealth of the several individuals belonging to it taken together. But to increase his particular portion is, generally speaking, among the constant objects of each individual's exertions and care. Generally speaking, there is no one who knows what is for your interest, so well as yourself — no one who is disposed with so much ardour and constancy to pursue it.

2. Generally speaking, it is moreover likely to be pernicious, viz. by being unconducive, or even obstructive, with reference to the attainment of the end in view. Each individual bestowing more time and attention upon the means of preserving and increasing his portion of wealth, than is or can be bestowed by government, is likely to take a more effectual course than what, in his instance and on his behalf, would be taken by government.

It is, moreover, universally and constantly pernicious in another way, by the restraint or constraint imposed on the free agency of the individual. Pain is the general concomitant of the sense of such restraint, wherever it is experienced.

Without being productive of such coercion, and thereby of such pain — in a way more or less direct — more or less perceptible, with this or any other view, the interposition of government can hardly take place. If the coercion be not applied to the very individual whose conduct is endeavoured to be made immediately subservient to this purpose, it is at any rate applied to others — indeed, to the whole community taken together.

In coercive measures, so called, it is only to the individual that the coercion is applied. In the case of measures of encouragement,

* Some parts of the following work were formerly published as the fourth Book of the work entitled *Rationale of Reward*; — they are now inserted in the places they were originally designed to occupy in Bentham's *Manual of Political Economy*.—*Ed.*

† To Adam Smith, the science alone has been the direct and constant object in view: the art the collateral and occasional one.

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the field of coercion is vastly more extensive. Encouragements are grants of money or money's worth, applied in some shape or other to this purpose. But for this, any more than any other purpose, money is not raised but by taxes, and taxes are the produce of coercive laws applied to the most coercive purpose.

This would not be the less true, though the individual pieces of money thus applied happened to come from a source which had not been fed by any such means. In all communities, by far the greatest share of the money disposed of by government being supplied by taxes, whether this or that particular portion of money so applied, be supplied from that particular source, makes no sort of difference.

To estimate the good expected from the application of any particular mass of government money, compare it always with the mischief produced by the extraction of an equal sum of money by the most burthensome species of tax; since, by forbearing to make application of that sum of money, you might forbear levying the amount of that same sum of money by that tax, and thereby forbear imposing the mass of burthen that results from it.

It would, however, be a gross error, and an extremely mischievous one, to refer to the defalcation thus resulting from the mass of liberty or free agency, as affording a conclusive objection against the interposition of the law for this or any other purpose. Every law which does not consist in the repeal, total or partial, of a coercive law, is itself a coercive law. To reprobate as a mischief resulting from this or that law, a property which is of the very essence of all law, is to betray a degree of blindness and ignorance one should think hardly possible on the part of a mind accustomed to the contemplation of any branch of the system of laws — a total unacquaintance with what may be called the logic of the laws.

Yet so imperfect is the state of legal knowledge, — marks of this perfectly surprising, as it will one day be, as well as much to be lamented ignorance, are to be found among the most experienced pens, not to mention the most loquacious tongues.

Power, knowledge* or intelligence, and inclination: where these requisites concur on the part of him on whom the production of the desirable effect in question depends, it is produced; when any one of them is wanting, it is not produced.

When these requisites exist already in perfection with reference to the production of any effect operating in addition to the mass of wealth on the part of the members of the community taken respectively in their individual capacities, it will be produced without the interference of the government; and as this interference is never a matter of pure indifference, — never otherwise than hurtful when it is not beneficial, these cases are among the cases in which that interference is not desirable.

In the cases where any one of these requisites is deficient, insomuch that for want of it the effect cannot be produced, — in such case the interposition of government may be desirable or not, according to the state of the account — according as the inconveniences attached to the measures in which the interposition of government consists, preponderate or fail of preponderating over the advantage attached to the effect which it is proposed should be produced.

If the effect fail of being produced without the interposition of government for want of any one or more of these requisites, it is by the supply of the requisite or requisites so wanting that the action of government may display itself. Thence, on every such occasion, these questions present themselves for consideration: —

1. Whether the effect in question fail of being produced in the degree in which it might be produced?

2. To the want of what requisite or requisites such failure is to be ascribed?

3. What are the means by which such failure may be supplied by government at the least expense?

4. When reduced to its least dimensions, is the expense necessary for the purpose in question such that the advantage will preponderate over the expense?

In a general view of the three requisites, inclination appears least apt to be deficient on the part of individuals. The general mass of national wealth is composed of the particular masses appertaining to individuals. On the part of the individual there is seldom any deficiency in respect of inclination to make addition to the amount of that particular mass of wealth which has fallen to his share.

It is in respect to the two other requisites, power and intelligence, that deficiency is much more apt to take place.

To these deficiencies the abilities of government are happily adapted. Inclination it could not give — it has not power to give it in the great mass of cases: — not by punishments, on account of the expensiveness, and in such cases the comparative inefficacy of such means; — not by reward, for want of a sufficient stock of that scarce and valuable matter which is not to be extracted but by taxes — that is, by punishments.

* Knowledge may be considered as a branch of power. It is power so far as it depends upon the mental condition of the party whose power is in question. Power, in the narrower sense of the word, depends upon the state and condition of external objects — objects exterior with reference to him.

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Intelligence and power may be administered by government at a much cheaper rate. A mite of reward, skilfully applied, is often sufficient to produce an immensity of intelligence. In many instances, it frequently requires nothing more than the removal of coercion from one hand to another, or even the repeal of it altogether, in order to confer the sort and degree of requisite power;* the operation, in either case, not being attended, in the shape of pain, with any perceptible effect.

The two most extensive descriptions of the cases in which it is necessary or expedient to interfere for the purpose of regulating the exertions of individuals in respect to the increase of wealth, are those in which it is necessary to regulate the pursuit of the several objects in view, according to the order of their importance: — in giving to the matter of wealth that modification which adapts it to the several purposes of subsistence and defence — security in respect of subsistence, and security in respect of defence — in preference to that which adapts it to the mere purpose of enjoyment.

With few exceptions, and those not very considerable ones, the attainment of the maximum of enjoyment will be most effectually secured by leaving each individual to pursue his own maximum of enjoyment, in proportion as he is in possession of the means. Inclination in this respect will not be wanting on the part of any one. Power, the species of power applicable to this case—viz. wealth, pecuniary power — could not be given by the hand of government to one, without being taken from another; so that by such interference there would not be any gain of power upon the whole.

The gain to be produced in this article by the interposition of government, respects principally the head of knowledge. There are cases in which, for the benefit of the public at large, it may be in the power of government to cause this or that portion of knowledge to be produced and diffused, which, without the demand for it produced by government, would either not have been produced, or would not have been diffused.

We have seen above the grounds on which the general rule in this behalf — *Be quiet* — rests. Whatever measures, therefore, cannot be justified as exceptions to that rule, may be considered as *non agenda* on the part of government.† The art, therefore, is reduced within a small compass: *security* and *freedom* are all that industry requires. The request which agriculture, manufactures, and commerce present to governments, is modest and reasonable as that which Diogenes made to Alexander: "*Stand out of my sunshine.*" We have no need of favour — we require only a secure and open path.

CHAPTER II.

ANALYTICAL SURVEY OF THE FIELD OF POLITICAL ECONOMY.

FOR the *genesis* of the matter of wealth — the causes and mode of its production under its several modifications — reference may for the present be made to Adam Smith, who has not left much to do, except in the way of method and precision.

The following are the first steps in an analytical survey of the field of political economy, showing how to draw a circle round the subject, and how to invent or discover what remains to be invented or discovered in this quarter of the field of human knowledge.

On the part of the individuals by whom increase of wealth is produced, the production of it is either purely *spontaneous*, or (with or without design directed to the increase of it) either promoted or obstructed by the operations of government. The correspondent practical division of acts and operations, the effect of which is to exert an influence on the quantity of the *national*, to which may be added the *mundane* stock of the matter of wealth, is — 1. *Sponte acta*; 2. *Agenda*; 3. *Non-agenda*.

In the track of political economy as in any other, whatever is done towards the attainment of the object, must be by creating inclination, or by bestowing power.

Inclination can only be operated upon by inducements, as —

1. By applications of a coercive or obligatory nature, — which are either injunctions or prohibitions.

* Supplying capital is supplying power. Capital might be supplied in England by taking off, *quoad hoc*, the restraints imposed on the accumulation of capital by partnership.

† Among these several classes, *agenda*, *sponte acta*, and *non-agenda*, the distribution of the imaginable stock of institutions will differ in a very considerable degree, according to the different circumstances of the several political communities. In regard to defalcations from general opulence for the security of subsistence, an arrangement of that sort which in one country may be at once *needful* and *practicable*, may in another be either not *needful*, or, what is more apt to be the case, *not practicable*. The greater the degree of opulence, the greater the list of *sponte acta* — the less, therefore, that of *agenda*. In England, abundance of useful things are done by individuals, which in other countries are done either by government, or not at all. Docks, harbours, canals, roads; institutions for relief against misfortune in a variety of shapes, and from a variety of causes—bodily affliction, death of friends, fire, hostile captures, and criminal depredation. In Russia, under Peter the Great, the list of *sponte acta* being a blank, that of *agenda* was proportionally abundant.

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2. By applications of an invitative nature, or encouragements, — which are either direct or indirect.

Power may to this purpose be distinguished into — 1. Legal; 2. Physical; 3. Intellectual, or knowledge.

1. Legal power may be conferred — 1. By forbearing to impose on the party proposed to be assisted coercion of any kind; 2. By coercing others in such a manner as to prevent them from obstructing his making use of the power of the preceding kind; 3. By compelling them to afford him assistance. In the two first of these cases, *power* is no more than *liberty*.

2. Physical power is conferred by giving to a party the physical instruments requisite to the attainment of the end proposed; — viz. money, or something that is to be had for money. This can only be done by legal power of one or other of the three kinds above mentioned.

3. Intellectual power is either — 1. Active power; or, 2. Knowledge. If active power be given by law, it can only be in some indirect way, through physical and thence through legal power.

Knowledge is either — 1. Of the modes of operating towards the end proposed; — viz. which are good, which bad — which worst, and which best; or, 2. Of matters of fact; — which may be conducive to this end, either — 1. By pointing out inducement; 2. By pointing out legal power; 3. By conducing to physical power or to intellectual power — either as leading to knowledge of the modes of operating, or to other matters of fact more immediately leading to such knowledge.

Encouragements may be distinguished into — 1. Direct; and, 2. Indirect. Direct consist of rewards, commonly called in this instance *bounties*, given to him who shall exercise his industry in such or such a way. Indirect, consist in discouragements opposed in the way of others, in the view of restraining them from exercising their industry in such or such a way; *i. e.* in such a way as shall prevent his exercising his in the way desired. If discouragements thrown in the way of A, answer the purpose of encouragement to B, it is because A's acting in the track he is thus discouraged from would have tended to discourage B from acting in the track he is meant to be encouraged to act in, by diminishing the reward, natural or factitious, he would have got in some way by acting in it.

To the head of encouragements may also be added operations the tendency of which is to confer power, and in particular physical power; such as the giving or lending money or money's worth, to be employed in the shape of a capital towards the carrying on a branch of industry meant to be encouraged.

In whichever of the above ways aid is applied, it must be either — 1. With a view of increasing the quantity of industry in general; or, 2. With a view of increasing the relative quantity of a particular branch of industry.

The causes of wealth, or say rather the matter of wealth,* are —

1. Final — well-being.

2. Material — matter considered in respect of its possessing, or being capable of possessing *value* — viz. subservency to *well-being*, the *final* cause.

3. Efficient — viz. motion.

The modifications of well-being, ranged in the order of their importance, are —

1. Subsistence, present.

2. Security in respect of defence — viz. against the evils to which human nature is exposed, particularly from the action of agents exterior to a man's body. Security in respect of future subsistence.

3. Enjoyment — viz. mere enjoyment, distinct from the maintenance of subsistence and the contemplation of security.

Matter, considered with reference to the final cause, — well-being, may be termed (such parts of it as by the use made of them become subservient to well-being, the final cause) matter of wealth.†

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* The compound term, "matter of wealth," is employed to prevent ambiguity: it carries with it a reference to quantity. There are many things which may constitute part of the matter of wealth, which when taken separately, or in small quantities, would hardly be called wealth. Thus the wealth of a stationer may consist in rags, a small portion of which lying on a dunghill few would call wealth; none, however, could deny that they might constitute part of the matter of wealth.

Opulence, though so nearly of kin to wealth, — and the rather for that very reason — requires to be distinguished from it. Opulence is relative wealth, relation being had to population. Quantity of wealth being given, the degree of opulence is therefore not *directly*, but *inversely*, as the population; *i. e.* as the degree of populousness — as the number of those who are to share in it: the fewer the sharers, the larger each one's share.

† Wealth, considered as arising at successive periods, is called *income*. That portion of it which is employed for the purpose of giving increase to its amount, is called *capital*.

An individual who would in any manner employ himself in the accumulation of wealth, ought to possess — 1. Materials on which to work; 2. Tools wherewith to work; 3. A place in which to work; 4. Necessaries for his subsistence while at work. All these objects are comprised under the name of *capital*.

In the order of history, labour precedes capital: from land and labour everything proceeds. But in the actual order of things there is always some capital already produced, which is united with land and labour in the production of new values.

When an article of the produce of land or labour, in place of being consumed or kept for

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The term, matter of wealth, is applicable in common to —

1. Articles or instruments of subsistence;
2. Instruments of defence;
3. Instruments of enjoyment.

Articles of subsistence are either of constant or occasional use.

Articles of constant use are —

1. Articles of nourishment — viz. food and drink, *i. e.* liquid or solid; the distinction between which is at their point of nearest approach undeterminable.

2. Articles serving for the regulation of temperature and state of the air in respect of moisture. These are — either lodging or clothing.

3. Articles of occasional use, are articles of medicine.

The evils to which defence bears reference may be considered as having their source in the agency of irrational agents or rational agents.

Defence against evils apprehended from the agency of irrational agents, is defence against calamities.

Among rational agents, those from whose agency evil is apprehended, are either considered as members of the community in question, or not: in the first case, the defence is against delinquency; in the other case, against hostility.

A modification of the matter of wealth may be referred to that one of the above three heads to which it is conducive in the greatest degree; — for the same article which is principally subservient to one, may occasionally be subservient to either or both of the two others.*

Enjoyment being in a manner inseparable from the application of articles of subsistence to their use, all articles of subsistence are instruments of enjoyment likewise. The distinction is, therefore, not between articles of subsistence and instruments of enjoyment, but between articles of subsistence and instruments of *mere* enjoyment — viz. that by their application to use contribute nothing to *subsistence* any more than to defence.†

The practice of exchange being established, each modification of the matter of wealth, to whichsoever of the above-mentioned divisions it belongs, is in virtue of that practice convertible with more or less facility and certainty into every other.‡ The richer a community, the better secured it is thereby against hostility and famine.

A stock of instruments of mere enjoyment presupposes, on the part of each individual, a preassured stock of the articles of subsistence. The stock of articles of subsistence capable of being produced and kept up in a country, in any other view than that of exchange, has its limits: it can never extend much beyond the stock necessary for the subsistence of the inhabitants — the stock of instruments of mere enjoyment is without limit.

It is only in respect and in virtue of the quantity of the stock of instruments of mere enjoyment, that one country can exceed another country in wealth. The quantity of wealth is as the quantity of its instruments of enjoyment.

In cases where, two articles of subsistence contributing in an equal degree to that end, one contributes in a greater degree to enjoyment (as is testified by the greater price given for it,) it may be considered as possessed of a compound value, which by analysis may be resolved as it were into two values;

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the use of him who has made it or caused it to be made, is offered in exchange, it then becomes an article of commerce — it is merchandise.

In all civilized societies, a class of persons is found, who purchase of the manufacturer, that they may sell to the consumer.

The whole of the operations of manufacture and of sale may be described by the general terms of production and trade.

* Thirty years after the conclusion of the seven years' war, some ammunition bread that had been baked for the Prussian army at the time of that war, was found in such a state as to have been eatable; a piece of it was eaten for curiosity's sake by a person whom I knew. In default of stones, which have sometimes for want of iron been used as cannon balls, this ammunition bread might have been applied to the purpose of defence.

Iron is the best material for knives and hatchets, though in Otaheite and elsewhere they are made of stones. A person whom I knew, once cut his finger (as he told me) with a piece of Suffolk cheese.

Hammocks, articles of subsistence (or rather of customary luxury, not indispensably necessary to subsistence, for a Russian often sleeps upon a bench, or upon the floor,) — articles of subsistence of a middle nature between clothing and lodging, are frequently applied to the purpose of defence on shipboard, being stowed in such manner as to deaden the stroke of the shot.

† Instances of instruments of mere enjoyment are abundant: — tobacco and perfumes may be sufficient for illustration.

‡ It is in consequence of the interconvertibility above mentioned — wealth in one shape being convertible into every other — that every instrument of mere enjoyment is a pledge of security, and that national power, so far as depends upon wealth, is in proportion not to absolute, but only to relative opulence — not to the absolute quantity of the matter of wealth in a nation, but to its ratio to the mass of the population. For of the aggregate value of the aggregate mass of the matter of wealth in a nation, the part dedicated to enjoyment is the only part applicable to the purpose of defence. What is necessary to subsistence must be applied to subsistence, or the man must starve. Hence the reason why France, so much superior to Britain, not only in population, but in absolute wealth, is yet inferior in power, except with relation to countries so near that the expense of invading them may be more or less defrayed by the contributions raised in *them*.

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one belonging to it in its capacity of an article of subsistence, the other in its capacity of an article of mere enjoyment.*

It is out of the fund for enjoyment that the portion of wealth allotted to *defence*, and the portion, if any, allotted to security in respect of subsistence, must be taken: for out of the portion allotted to subsistence none can be spared.

But though security increase in proportion as opulence increases, and inequality be an inseparable accompaniment of opulence, security does not increase in proportion as inequality increases. Take away all the ranks in respect of opulence, between the highest and the lowest — the inequality will be increased, but the degree of security will be diminished.

Luxury is not only an inseparable accompaniment to opulence, but increases in proportion to it. As men rise one above another in the scale of opulence, the upper one may, without excess, give into expenses which those below cannot give into without prodigality. It is therefore no more desirable that luxury should be repressed, than it is that opulence should be repressed — that is, that security should be diminished. If it were desirable that luxury should be repressed, it could be done no otherwise than either by depriving the more opulent classes of a part of their property in this view, or coercing them in the use of it. It would be less unreasonable to restrain prodigality wherever it is to be found, than to restrain the highest imaginable pitch of luxury on the part of those whose expense does not exceed their income.

The mass of that matter which is the material cause of wealth, has for its sources —

1. Land — *i. e.* dry land uncovered with water.

2. Water — *i. e.* land covered with water.

The matter of wealth considered in respect of its modifications, may be distinguished, in the first place, into matter in an unimproved state — in the state in which it comes out of the hands of nature; and matter in an improved state, *i. e.* modified by human labour, for the purpose of its being adapted to whatever uses it may be designed for.

Any distinguishable portion of the matter of wealth may be either an article of immediate or of subservient use.

It is an article of immediate use, when it is itself applicable to any one of the three above-mentioned ends, viz. subsistence, security, or enjoyment.

It is an article of subservient use, when, though it contribute to some one or more of those ends, it does so not by any immediate application of its powers to any one of the above three ends, but by the instrumentality of some other article which is of immediate use, and which it renders, or contributes or tends to render, subservient to that use.

The operations by which an increase of the matter of wealth is produced or promoted, may be enumerated under the following principal heads, viz. —

1. Discovery—viz. of the source of the raw material, or portion of matter of wealth in an unimproved state.

2. Discovery of this or that portion of land, considered as the source from which portions of matter in an unimproved state are extracted.

3. Extraction—viz. of the raw material from the portion of land which is its source.

When an increase of wealth to any given amount takes place, it is either by means of an increase of labour, or without any increase.

When it takes place without any increase in the quantity of labour, it takes place by means of an increase in the effect, or say, efficiency of the quantity of labour employed.

The degree of efficiency in the quantity of labour employed being given, the increase of wealth produced by the labour will be as the quantity of it.

If the quantity of wealth which, before the increase of efficiency, required a year's labour of two thousand men, be now produced by a year's labour of one thousand, there remains the year's labour of one of the sets of a thousand men, which, when employed in the same way, or with the same degree of efficiency as that of the first set, will produce a fresh mass of wealth equal to the original one.

Reducing by one-half the number of men employed about an individual mass of work, the quantity of the work done not being diminished by such reduction, is therefore the same thing in effect as doubling the number of men employed with the same degree of efficiency as before.

But this supposes that the number of hands thus rendered unnecessary with regard to the production of the given quantity of work, are employed with the same degree of efficiency, or at any rate are employed. If not

* In the character of an article of subsistence, a pound of potatoes and a pound of pine-apples may stand pretty nearly upon the same level; — but a single pound of pine-apples may sell for the same price as one hundred pounds of potatoes, — the pound of potatoes selling for a halfpenny, and the pound of pine-apples for one hundred halfpence. This being the case, out of the hundred halfpence, which is the price and value of the pound of pine-apples, one halfpenny goes to subsistence, and the remaining ninety-nine to mere enjoyment. It is the same thing as if the halfpenny had been employed in the purchase of another pound of potatoes, and the remaining ninety-nine in the purchase of perfumed powder for the hair, instead of being put into the mouth for nourishment.

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employed at all, no increase in the quantity of wealth will be brought about by the increase in the efficiency of the mass of labour which continues to be employed: — if employed, but employed with a less degree of efficiency, then the fresh quantity of wealth thus produced by the expelled hands will fail of being equal to the quantity produced by the hands retained, in a degree proportioned to the difference in the degree of efficiency.

If by means of the introduction of machinery, or improvement in the machinery in use, a manufacturer be enabled with one thousand hands to perform the same quantity of work as that which before the improvement required two thousand hands, it might seem at first sight, from this statement, that the natural effect of the improvement would be the retaining the same quantity of hands employed in that branch of manufacture, and thence the doubling the quantity of goods manufactured in the time. But without an addition to the mass of pecuniary capital, which is a circumstance accidental and not belonging to the case, the retaining of the same number of hands so employed would in no instance be possible; for the production and keeping up of the machinery or other auxiliary means would always require a considerable quantity of labour, the payment of which would be attended with a proportionable mass of expense, by which a proportionable part of the capital would be absorbed.

If the hands employed on the machinery should be paid at a higher rate than the hands employed in the manufacture, the capital being the same after the improvement as before, the number of manufacturing hands would be still further decreased on this account.

Hence it follows, that increase of wealth by saving of labour is not so great as increase of wealth by increase of quantity of labour; and that, consequently, opposition to machinery is well grounded, if no care be taken to provide immediate employment for the discharged hands. At first, the temporary distress will outweigh the temporary enjoyment; but, so far as depends on increase of wealth, the increase of enjoyment is perpetual.

The quantity of wealth, or matter of wealth, existing in a community at the end of a given space of time (say forty years,) will be as the quantity of wealth existing therein at the commencement of the period — *plus* the quantity of wealth that has come into it, *minus* the quantity that has gone out of it.

Hence two modes of increasing the quantity of wealth: — 1. The direct and positive mode, increasing the quantity that *comes in;* 2. The indirect and negative mode, diminishing the quantity that *goes out.*

Wealth has two sources, to which correspond two modes of coming into a community: — 1. Home production; 2. Importation.

It has in like manner two correspondent modes of going out: — 1. Consumption; 2. Exportation.

In the case of importation, the increase is only *relative*, relation being had to the community in question: importation alone being considered, by so much as the wealth of this community is increased, by so much is the wealth of some other community decreased.

In the like manner, in the case of exportation, the decrease is only relative: exportation alone being considered, by so much as the wealth of this community is decreased, that of some other is increased: in relation to the world at large, the quantity suffers not in either case any change.

In general, import, in respect of one portion of wealth, does not take place, but *export*, in respect to another and correspondent portion, a portion generally regarded as being of equal value takes place at nearly the same time; the transfer or self-deprivation having the acquisition, for what in the language of English law is called its consideration, and in the language of general logic, its final cause. But between community and community, as between individuals, from matters of fear, amity, or remote personal interest, it will sometimes happen that export from this community shall take place without a correspondent import into it from that — import into this country without export from it into that; though import into this cannot take place (unless it be from spots occupied in common by the two, such as the greater part of the sea, and some unappropriated parts of the land) without export from that.

Consumption, again, takes place in either of two ways: — 1. Purposely, in the way of use; or, 2. Undesignedly, in the way of deperition without use.

Deperition is either total or partial: partial, is deterioration.

Deperition is in strictness no otherwise true of any portion of matter than in as far as it respects *form*, and *value* as resulting from that form — *value, i. e.* subserviency to use.

An act whereby deperition is produced, is called *destruction*. An act whereby deterioration is produced, may be termed *deterioration* (the word being used in the active sense) or endamagement.

Acts whereby destruction or deterioration is produced, and thereby loss without preponderant benefit, it is the province of the non-penal branch of the law to define, and of the penal to prevent.

Preservation may be either *total* or *partial:*

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it can only be partial in cases where decrease to a greater or less amount is indispensable, as in case of *taxes*.

Taxes may be imposed either to furnish means for *future* expenditure, or to afford compensation to those who in times past have furnished the means for expenditure which *then* was future: in other words, for growing expenses, or for discharge of debts.

The amount of taxes imposed for growing expenses, takes from the amount of national wealth in certain ways, and adds to it in other ways, more or less, according as it is employed. It takes from the means or instruments of enjoyment, present or future, immediate or more or less remote, according as it would have been spent, lent out, or hoarded, had it not been for the tax. It adds to the security of the whole, in proportion as it is employed for the purpose of national *security*, in the way of national defence and otherwise. It adds to the subsistence and enjoyment of a part, in proportion as it is applied to those purposes, by those among whom it is distributed in consideration of the services by which they have respectively contributed to that end.

The amount of taxes imposed in discharge of debt, of itself neither adds to nor takes from the mass of national wealth, but is the necessary result of measures of expense, necessary or unnecessary, avoidable or unavoidable, beneficial or pernicious, by which in former times a decrease in the mass of national wealth was produced. But when, and in so far as, the money produced by these taxes is actually employed in discharge of debt, it adds to capital, and thereby to growing wealth.

Finance is an appendix and inseparable accompaniment to political economy. Taxes are sacrifices made of wealth and opulence at the expense of enjoyment, to security, in respect of defence, and security in respect of subsistence.

Taxes and other means of supply for the expenses of government, — wars with their taxes and their devastations, are means by which, of necessity, in a certain degree, and too often beyond the extent of the necessity, decrease in the amount of wealth and population is produced. In this way the field of *political economy* includes within it the field of *finance*.

A tax, in as far as the thing taxed is abstained from, operates as a prohibition — as a discouragement to that branch of trade or production to which the thing belongs, and as an encouragement to rival branches; that is, more or less to all other branches. Hence another head of connexion between finance and political economy in its narrower sense. The same illusion which has recommended the encouragement of particular branches of wealth as a means of increase to the whole, has led to the exaggeration of the bad effect of taxes in this point of view.

Hence the care taken by governments to throw the weight of taxes upon *imports* and *home productions*, rather than upon exports; that is, upon their own subjects, rather than upon foreigners.

Under the above heads may be reduced, without violence, everything that can be said on the subject of political economy, including finance.

CHAPTER III.

OF WEALTH.

§ 1. *Sponte Acta.*

THE national wealth is the sum of the particular masses of the matter of wealth belonging respectively to the several individuals of whom the political community — the nation — is composed. Every atom of that matter, added by any one such individual to his own stock, without being taken from that of any other individual, is so much added to the stock of national wealth.

To add to his own particular stock, and to add in each portion of time more than by use or otherwise is taken from it in that same portion of time, is, with a very few exceptions, the constant aim and occupation of every individual in every civilized nation. Enjoyment is the offspring of wealth, — wealth of labour. What men want from government is, not incitement to labour, but security against disturbance — security to each for his portion of the matter of wealth, while labouring to acquire it, or occupied in enjoying it.

For the purpose of increasing wealth, individuals require neither to be forced to labour, nor allured. The want of that which is not to be had without labour is sufficient force: the assurance of being able to enjoy it, is sufficient allurement. Leave men to themselves: each man is occupied either in the acquisition of wealth (the instrument of enjoyment,) or in some actual enjoyment, which, in the eyes of the only competent judge, is of more value. If idleness be to be discouraged, it is not because it is the non-acquisition of wealth, but because it is the source of crimes.

Whoever takes upon him to add to national wealth by coercive, and thence vexatious measures, stands engaged to make out two propositions: — 1. That more wealth will be produced by the coercion than would have been produced without it; 2. That the *comfort* flowing from the extra wealth thus produced, is more than equivalent to whatever

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vexation may be found attached to the measure by which it was produced.

§ 2. *Agenda.*

The *application* of the matter of wealth to its several purposes, in the character of an instrument of general *security*, is evidently of anterior and superior importance to the *increase* of it. But this class of operations belongs to other heads — to legislation and administration in general — to the establishment of laws distributive and laws penal; and the institution, collation, and exercise of powers military, fiscal, judicial; and of police.

The operations coming under the head of *Agenda* — viz. on the part of government, — may be described as those which are conducive either to the increase of the national stock of the matter of wealth, or to the application of it in the most efficient mode, to any of its three uses, viz. subsistence, security, and enjoyment; and which not being attended with preponderant vexation, are not to be expected to be performed by the spontaneous exertions of individuals: of the three conditions requisite for the production of this or any other effect, viz. *inclination*, *power*, and *knowledge*, some one or more being wanting on the part of individuals.*

A particular case for the interference of government in this view, is where *inclination* and *knowledge*, both adequate to the purpose, and even *power* (so far as depends on the possession of the matter of wealth,) being pre-existent on the part of individuals, nothing but an allotment of *political* power of an *appropriate* kind, requires to be supplied on the part of government. Such is the case where *corporate* powers are requisite for the management of a *common stock*; and thereby for enabling individuals spontaneously associated for the purpose, to give a more effectual *combination* to their exertions in the pursuit of a common end.

Whenever *non-agenda* have been *acta*, the doing away of these *male acta* may form so many additions to the catalogue of *agenda*.

To this head belong those operations which consist in the removal of obstructions to *sponte acta*.†

From the catalogue of *agenda*, having for their object the increase of the national stock of the matter of wealth in all its three shapes together, must be distinguished any such measures, the aim of which is confined to the increasing of it in any one of those shapes, at the expense of either of the two others. Measures of this tendency will, so far as they are justifiable, find their justification in the same considerations which prescribe the application of the matter of wealth to its several *uses*.

In this way, if a sacrifice be made of the matter of wealth in the most agreeable of its shapes, to the same matter in one or other of the two necessary ones — of the matter of *enjoyment* to the matter of *subsist-*

* Examples: Establishments for the propagation of knowledge; viz. on the subject of those *arts* on which the augmentation or preservation of the matter of wealth, in any of its shapes, depends. In England — 1. The Board of Agriculture; 2. The Royal Institution; 3. The Veterinary school; 4. The Royal Academy: viz. to a certain degree, if considered in this point of view.

In each of these several instances, the amount of profit reasonably to be expected is beyond calculation; while the individuals, among whom it may come to be shared, are equally out of the reach of conjecture. On the other hand, in the character of a source of profit, there is no limited assemblage or class of individuals, to whom the establishment of any one of these institutions would at the same time have been practicable, and have afforded a reasonable expectation of payment for the expense.

5. An illustrious and more useful example — because more *needful*, as well as more *extensive*, than all these English ones put together, supposing the execution to correspond with the design — is afforded by the universities and other education-establishments now setting on foot in the Russian empire (1801.)

6. France, on the same supposition, may be referred to for another.

The justification of the communication from sea to sea through Scotland by the Caledonian canal, is to be sought for in the same principles, though the preponderance of profit over expense can scarcely be expected to prove equally considerable. Of the profit, part, though to an unassignable amount, will distribute itself among a limited, and perhaps individually assignable description of individuals: other part, in portions altogether unassignable, among individuals more clearly unassignable; viz. among the community at large. On this supposition, it seems, it is that the expense was divided between the aggregate of these private purses and the public purse. Had the profit to the local proprietor and other neighbouring inhabitants been adequate, and a fund adequate to the whole expense been obtainable from that source, the propriety of a contribution at the public expense would have fallen to the ground.

† Examples: 1. Facilitating the conversion of inter-community of occupation of land into separate ownership.

2. Abolition or modification of those laws by which land is vested inalienably in a line of natural successors, how much soever by impoverishment disabled from causing increase, or even preventing decrease, in the value of its produce.

3. Abolition or modification of laws, which give the like perpetuity to obligations attached to property in land, in the case where those obligations are attended with greater *burthen* (viz. in the way of obstruction of increase,) to the party *on* whom they are imposed, than *profit* to the party *in whose favour* they were imposed. Such is the case with many of the *obligations* termed (with reference to the party favoured by them) *feudal rights*.

4. Gradual abolition and intermediate modification of those personal obligations which come under the head of *slavery*.

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ence, or the matter of *defence*; — if the assumed necessity be real, the transformation belongs, by the supposition, to the catalogue of *agenda*.

If in any nation, for the use of the whole or any part of such nation, government were to establish, in the character of *security funds*, magazines of the matter of subsistence, not to be drawn upon but in times of extraordinary scarcity, — an institution of this sort would hardly be thought of, much less be regarded as beneficial and desirable, under the notion of its producing a clear addition to the aggregate mass of the national stock of the matter of wealth, in all its shapes taken together. In the catalogue of *agenda* it could not be placed in any other character than as a sacrifice of enjoyment to *subsistence*.

If the nature of the case be such, that the aggregate of the security-funds laid up in the country in question by dealers, may at all times be safely depended upon as sufficient, the establishment of such funds by government, on its own account, will be plainly indefensible: being pregnant with loss instead of gain (as, in the business of buying and selling, trust-management will naturally be, when compared with interested management,) it would disturb the operations of individual dealers, and be prejudicial rather than conducive to the end aimed at; — viz. national security in respect of subsistence.

If, on the other hand, in that same country, seasons are continually liable to recur in which the aggregate of these private security-funds cannot with safety be depended upon, the proposition is reversed: government need not scruple to insure its subjects in this way, against loss and distress by scarcity.

In each country the establishment of such security-funds is an affair of calculation. For the meridian of England, a very considerable stock of data have already been furnished by experience. But what is shorter than calculation, is the reflection that the world is wide, and should the country ever receive another visit from famine (a visit too unpleasant to be thought of,) what is not to be had *here*, may *perhaps* be to be got elsewhere.

In a similar manner, sacrifices may be made of enjoyment to national defence. An example of this kind was found in the English navigation act. It operated in diminution, rather than in augmentation, of the aggregate mass of the matter of wealth. It made England pay more for freight than she would otherwise; and *pro tanto* drove the foreign nations in question from this line of industry into some less profitable one. This loss, whatever was the amount of it, was the price paid by England for whatever addition it thus made to its stock of the matter of defence; viz. for a sort of *navy of reserve*, for an extra portion of *possible* marine force—convertible into *actual* at pleasure. The measure could only be deemed eligible by assuming the necessity for the maintenance of the sort of security-fund thus kept up; *i. e.* for that part of the national stock of maritime skill which owed its production and maintenance to this measure.*

Another example may be found in the allowances in money given for the encouragement of certain fisheries. The object was the same as in the former case; the mode of encouragement being, not as in that case *indirect*, but *direct*, — the money being given at the expense of national wealth, and thence of national enjoyment. If without this encouragement the trade would not have been beneficial enough to be carried on, the quantity of the matter of wealth thus bestowed upon it was so much taken from enjoyment and given to defence, — and thence, if not necessary to defence, thrown away. If the trade would have been beneficial, the result of the measure is, besides the transfer of so much of the matter of wealth from the account of enjoyment to the account of defence, a net addition to the quantity of the whole. But it is only in the supposed necessity of it for the purpose of *defence*, that such sacrifice of national *enjoyment* can receive its justification. Take away the necessity, there remains wealth, purchased at the expense of justice — enjoyment given to one man, at the expense of enjoyment taken from another. A case conceivable, and perhaps realized, is — that as to part, the allowance may fall under one of the above suppositions; as to another part, under the other.

§ 3. *Non-Agenda.*

Whatever is not *sponte actum* on the part of individuals, falls thereby into the class of *non-agenda* on the part of government. Coercion, the inseparable accompaniment, precedent, concomitant, or subsequent of every act of government, is in itself an *evil*: to be anything better than a pure evil, it requires to be followed by some more than equivalent good. Spontaneous action excludes it: action on the part of government, and by impulse from government, supposes it.

Among *non-agenda*, therefore, must be reckoned the attempting to give birth or increase to this or that particular branch of industry productive of wealth, under the notion of giving an increase thereby to the aggregate of the national mass of wealth.

* Considered as a measure of *special* encouragement, having for its object the increase of the aggregate mass of wealth, it would belong to the head of *non-agenda*. Operating by discouragement applied to a rival branch of industry — viz. the same occupation in the hands of foreigners, — operating in this way, and not by grants of money, it made no addition to the general wealth in the way of forced frugality.

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No kind of productive labour of any importance can be carried on without capital. Hence it follows, that the quantity of labour applicable to any object is limited by the quantity of capital which can be employed on it.

If I possess a capital of £10,000, and two species of trade, each yielding twenty per cent. profit, but each requiring a capital of £10,000 for carrying them on, are proposed to me, it is clear that I may carry on the one or the other with this profit, so long as I confine myself to one; but that, in carrying on the one, it is not in my power to carry on the other; and that if I seek to divide my capital between them both, I shall not make more than twenty per cent.; but I may make less, and even convert my profit into a loss. But if this proposition be true in the case of one individual, it is true for all the individuals in a whole nation. Production is therefore limited by capital.

There is one circumstance which demonstrates that men are not sensible of this truth, apparently so obvious. When they recommend the encouragement of particular branches of trade, they do not pretend that they are more profitable than others; — but that they are branches of trade, and they cannot possess too many. In a word, they would encourage trade in general,—as if all trade did not yield its own reward — as if an unprofitable trade deserved to be encouraged — and as if a profitable trade stood in need of encouragement; as if, indeed, by these capricious operations, it were possible to do any other thing than transfer capital from one branch of trade to another.

The quantity of capital being given, the increase of wealth will, in a certain period, be in proportion to the good employment of this capital — that is to say, of the more or less advantageous direction which shall have been given to it.

The advantageous direction of capital depends upon two things: — 1. The choice of the undertaking; 2. The choice of the means for carrying it on.

The probability of the best choice in both these respects will be in proportion to the degree of interest which the undertaker has in its being well made, in connexion with the means he has of acquiring the information relative to his undertaking.

But knowledge itself depends in a great measure upon the degree of interest which the individual has in obtaining it: he who possesses the greatest interest will apply himself with the greatest attention and constancy to obtain it.

The interest which a man takes in the concerns of another, is never so great as he feels in his own.

If we consider everything necessary for the most advantageous choice of an undertaking, or the means of carrying it on, we shall see that the official person, so fond of intermeddling in the detail of production and trade, is in no respect superior to the individuals he desires to govern, and that in most points he is their inferior.

A prime minister has not so many *occasions* for acquiring information respecting farming as a farmer — respecting distillation as a distiller — respecting the construction of vessels as a shipbuilder — respecting the sale of commodities, as those who have been engaged in it all their lives.

It is not probable that he should either have directed his *attention* to these objects for so long a time, or with the same degree of energy, as those who have been urged on by such powerful motives. It is therefore probable, that in point of information relative to these professions, he is inferior to those who follow them.

If by chance a minister should become informed of any circumstance which proves the superior advantage of a certain branch of trade, or of a certain process, it would not be a reason for employing authority in causing its adoption. Publicity alone would produce this effect: the more real the advantage, the more superfluous the exercise of authority.

To justify the regulatory interference of government in the affairs of trade, one or other of these two opinions must be maintained: — that the public functionary understands the interests of individuals better than they do themselves; or that the quantity of capital in every nation being infinite, or that the new branches of trade not requiring any capital, all the wealth produced by a new and favourite commerce is so much clear gain, over and above what would have been produced, if these advantages had not been conferred on this trade.

These two opinions being contrary to the truth, it follows that the interference of government is altogether erroneous — that it operates rather as an obstacle than a means of advancement.

It is hurtful in another manner. By imposing restraints upon the actions of individuals, it produces a feeling of uneasiness: so much liberty lost — so much happiness destroyed.

Divide the aggregate mass of profit-seeking industry into any number of branches: each calls, or at least has an equal right to call upon government for encouragement — for encouragement at the expense of the public purse; that is, of all the other branches. Gratify all alike, — there is, as between them at least, no injustice on the one hand, no profit on the other. Gratify any number short of the whole — injustice is certain — profit questionable.

The measures which present themselves in the character of *non-agenda*, may be dis-

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tinguished into *broad measures* and *narrow measures*: — broad measures having for their effect, or their object, the augmentation of wealth in all its shapes without distinction: narrow measures having for their object the augmentation of wealth by the increase of profit-seeking industry in this or that particular branch in preference to others, under the notion of its producing more wealth in that than in others. We shall proceed more particularly to consider some of the measures which have been so employed.

§ 4. *Non-agenda — Broad measures.*

Example 1. Forced frugality.

By raising money as other money is raised, by taxes (the amount of which is taken by individuals out of their expenditure on the score of maintenance,) government has it in its power to accelerate to an unexampled degree the augmentation of the mass of real wealth.

By a proportionable sacrifice of present comfort, it may make any addition that it pleases to the mass of future wealth; that is, to the increase of comfort and security. But though it has it in its power to do this, it follows not that it ought to exercise this power — to compel the community to make this sacrifice.

To a certain degree — to a degree which in the ordinary course of things is quite sufficient for the purpose, the community makes this sacrifice of itself. This voluntary sacrifice is, at least in the ordinary state of things, amply sufficient for the purpose — for every purpose; and as the impulse is spontaneous, so far all is right.

On the other hand, the application of money raised by taxes in the shape of capital to the endeavour to promote national opulence, can only be carried into effect at the expense of justice. In the first place, it operates unjustly by forcing a man to *labour*, though it were for his own benefit, when he wishes to *enjoy*. It operates unjustly in the second place, by forcing one man to labour for the sake of increasing the enjoyments of another man — increasing his enjoyments, or rather the stock of the instruments of enjoyment in his hands; for all that government can do in behalf of enjoyment, otherwise than by *security*, is to increase the quantity of the mass of instruments of enjoyment: — application of these instruments in such manner as to produce actual enjoyment, depending altogether upon the individual, and being an effect altogether out of the reach of government.*

The effect of forced frugality is produced by paying off national debts. In this case, the production of the effect is not only unexceptionable, but necessary: it is a collateral result, and that a very advantageous one, from a necessary act of justice.

On the *buying-in* or *paying-off* of the *government annuities* in which the debt in Great Britain consists, the money raised by taxes — of which the whole mass, with a trifling exception or two, bears not upon *capital* but upon income, passes into the hands of the *expelled annuitants*; who to make it afford them an *income*, as before, must employ it *themselves* in the shape of *capital*, or lend it to *others*, who will employ it in that shape.

If the sum of money paid by government to such annuitants on the redemption of their annuities be greater than the sum received by government on the creation of those same annuities, the quantity of the sum thus raised by forced frugality, and poured into the money market, receives a proportionable increase.

The effect of forced frugality is also produced by the creating of paper money by government, or the suffering the creation of paper money on the part of individuals.

* To the opulence of the Prussian empire Frederic the Great made some real additions, and some imaginary ones. The imaginary ones consisted in encouragements given to this and that branch of profit-seeking industry: the real ones consisted in money given on condition of being employed in the shape of capital. But to be given to Peter, it must have been taken from Paul and his brethren. This he scrupled not to do: his object being — the increase of his own power and grandeur, not the preservation of the means of enjoyment in the hands of his subjects: he was content to purchase opulence at the expense of justice. At a similar expense, Egypt not only was, but continues to be, enriched — enriched with pyramids and temples.

Perhaps, having placed himself in a state of perpetual insecurity by injustice towards his neighbours, he found himself under a sort of necessity of increasing his means of security by this injustice towards his subjects. On this supposition, the injustice consisted — not in the taxes for defence, and the taxes for the production of national wealth as a fund for defence, which the perpetually impending danger had rendered necessary, — but in the wars of rapacity by which the perpetually impending danger had been produced.

Among the largesses bestowed by the same monarch, we may find another class which does not come under either head of reprobation. These consist in money given in reparation of damage done by war. Largesses of this class are not only unexceptionable, but useful: being consistent as well with the interests of justice as with those of national opulence. Their utility rests on the same basis as that of insurance against loss by calamities purely physical.

As to the largesses given under the notion of *special* encouragement (encouragement to a particular branch of trade in preference to others,) though the addition set down as made on this score by each sum of money so bestowed was imaginary, yet from that same sum of money flowed a real addition, though on a different score; viz. on the score of *forced frugality*, as above explained.

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In this case, the effect is produced by a species of indirect taxation, which has hitherto passed almost unnoticed.

§ 5. *Non-agenda — Broad measures.*

Example 2. Increasing money.

Labour, and not money, is the real source of wealth. All hands being employed, and employed in the most advantageous manner, wealth, real wealth, could admit of no further increase: — but money would be increasable *ad infinitum.**

The effect of every increase of money (understand, of the ratio of the quantity of money employed in the purchase of things vendible, to the quantity of things vendible for money,) is to impose an unprofitable *income tax* upon the incomes of fixed incomists.†

If on the introduction of the additional money into the circulation, it pass in the first instance into hands which employ it in the way of unproductive expenditure,‡ the suffering from this tax remains altogether uncompensated: — if before it come into any hands of that description, it have come into hands by which it has been employed in the shape of capital,‖ the suffering by the income tax is partly reduced and partly compensated. It is reduced, by the mass of things vendible produced by means of it: — a mass, by the amount of which, were it not for the correspondent increase in the mass of money, the value of the mass of money would *pro tanto* have been increased, and the prices of things vendible decreased. It is in a certain degree, though in a very inadequate degree, compensated for§ by the same means; — viz. by the amount of the addition made to the quantity of sensible wealth — of wealth possessing a value in the way of use.¶ Here, as in the above case of forced frugality, national wealth is increased at the expense of national comfort and national justice.

On those who receive no share of the fresh addition to money — on those whose sole income consists in an unincreasing sum of money, the income tax bears with all its pressure; whilst those who receive a share of the fresh money equal to the amount of the depreciation, receive beforehand a compensation adequate (in money at least, howsoever it may be in regard to feelings) to their loss by the indirect tax.

In this case, the measure coincides with the one already reprobated, — the increasing the mass of real capital by money raised by taxes. The difference is, that the mode in which the

* To this head belongs the investigation of the influence of money on *real wealth* — or say, for shortness, *wealth.* Money may well be put in contradistinction to everything else which is ever called *wealth:* — which is ever considered as a modification of the matter of wealth: for *money,* so long as it is kept in the shape of money, and in the same hands, is of no kind of use. In that shape no man can ever make any kind of use of it but by parting with it, or at least standing engaged to part with it. What value it has, is in the way of *exchange:* value in the way of use it has none. When out of that shape the materials are thrown into other shapes, then indeed they have their value, but for which they would have had none in the way of exchange. Paper money, not having in respect of its materials any value in the way of use, has no value but in the way of exchange: nor in that way, but on the supposition of its being capable of being exchanged for that money, or an equivalent for that money, of which it contains and conveys the promise.

† The following is an indication of the indirect income tax resulting from increase of money: — In Britain (anno 1801) money is about £72,000,000: income about £216,000,000 — (72 : 216 : : 1 : 3.) — *Each* million added to *money,* adds therefore *three* millions for ever to *pecuniary income;* and this (setting aside the 15 per cent. for ever (£150,000) for profit on the million if employed in the shape of capital) without addition to real income. If in every year, £2,000,000 be added to money (*plus* £300,000 for an equivalent to the addition made as above to real wealth) in 36 years (anno 1837) the nominal or pecuniary amount of a mass of real income equal to the amount of 1801, will be doubled, *i. e.* become £432,000,000: to which will be added £10,800,000 for an equivalent to the intermediate addition to real wealth (£300,000 × 36.) But the £432,000,000 of 1837 being worth no more than the £216,000,000 of 1801, each £100 of the £432,000,000 will be worth but £50 of the £216,000,000; that is, the income of each *fixed incomist* will by that time have been subjected to an indirect income tax of £50 per cent. He whose pecuniary income in 1837 is double what it is in 1801, will in point of *wealth* be neither a *gainer* nor a *loser* by the change. *Not* so in point of *comfort.* For by so much as he is a gainer in wealth in the *one* way, by so much he is a loser in the *other:* and by the nature and constitution of the human frame, sum for sum, enjoyment from *gain* is never equal to suffering from loss.

‡ As if a proprietor of a mine of gold or silver, living solely on the income yielded to him from his mine, and spending his whole income, as income is spent by non-labouring hands, were to receive an increase of such his rent in the shape of gold or silver ready coined, and spend the whole of it as before; — or as if a government should issue paper money in discharge of its debts, or for defraying the consumptive part of its expenditure.

‖ As in the case of paper money issued by a banker to a borrowing customer, agriculturist, miner, fisher, manufacturer, or merchant, to be employed in trade, &c.

§ The compensation, besides being inadequate in quantity, is in its application unconformable to justice, being shared in larger proportion by the mercantile man, *for whose benefit* the tax has been imposed, than by the public on whom it has been imposed.

¶ Money, inasmuch as while it remains in the same hands it possesses not any value in the way of *physical use,* has no other value than what at the instant of its passing from hand to hand it possesses in the way of exchange.

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money is raised is disadvantageous to a degree of usuriousness much beyond anything ever exemplified under that name; — the money being raised at an interest of 300 per cent., payable for ever by the possessors of fixed incomes — subject to a small deduction as an equivalent for the goods produced in each year by the addition made to the mass of real capital.

No sooner, however, does such additional sum of money pass on from the hands by which it is employed in the shape of capital, into those hands by which it is employed in adding to unproductive expenditure, than its operation in the way of making an addition to real wealth is at an end. No sooner does it go in addition to money employed in the purchase of articles for consumption, than its power of producing an addition to the mass of the matter of real wealth is at an end: — thenceforward and for ever it keeps on contributing by its whole amount to the increase of prices, in the same manner as if from the mines it had come in the first instance into an unproductive hand, without passing through any productive one.

In all cases where the addition thus made to wealth is not illusory *in toto*, it is so as to part, and that by far the greater part. Of the proportion between the illusory and the real part of the supposed addition to real wealth, the rise of prices in a country where no fresh money has been poured into unproductive hands, without first passing through a productive hand, is at once a demonstration and a *measure*. So much of the added wealth as *hath not* been accompanied by a countervailing addition to wealth, whether it have contributed anything to that addition or no, is over and above that portion which has been solely employed in producing the rise of prices.

Supposing that within the last half century, in the whole commercial world together, wealth has received an increase to the amount of one-fourth, and at the same time prices have doubled, — it follows, that of the money now existing in that world, nearly half has to a certainty been worse than thrown away, having been employed in the imposition of the unproductive income tax above described: — and as to the addition to wealth, it is a matter of uncertainty what part, and even whether any part, has been produced by the addition to money, since without any such addition it might have been produced as well as by it.

In respect of the *ratio* of money to things vendible — of the aggregate of the one, to the aggregate of the other, — the state of things most desirable is — that it should continue the same at all times — no increase at any one time, no decrease at any other.

The tendency of a decrease, if sudden, and to a certain degree considerable, is to produce general bankruptcy: the mass of pecuniary engagements entered into within any given period of time, being grounded of course on the existing ratio of money to things vendible at that time, and not on the supposed suddenly supervening, or any inferior *ratio*. If at any time, the mass of things vendible not being in the same proportion decreased, out of the quantity of money of all kinds habitually in circulation, a portion of any sort, in the supposed degree considerable, be suddenly defalcated, the deficiency must be supplied by some portion of another sort, or something that will be accepted as equivalent, or the supposed general bankruptcy follows of course.*

The tendency of the like decrease, in so far as it is permanent, but too gradual to be productive of general bankruptcy, is — to impose an unproductive income tax, parallel to that above mentioned, but upon a different set of parties — upon all parties charged with annuities, or other fixed payments, on the ground of contracts to which it is not in their power to put an end.

As to an increase in the ratio of money to things vendible, the tendency of it in respect of the unprofitable income tax, by increase of prices of things vendible — by depreciation of money — has been shown above.

So far as addition to money is made in the shape of metallic money, the mischief producible by it is confined to that of the depreciation, as above. So far as it is made in the shape of paper money — consisting in promises of metallic money — the amount of which promises is accordingly exigible in the shape of metallic money, — to the actual mischief of depreciation, is superadded the contingent mischief of general bankruptcy.

When governments add to money by paper money, it is commonly in a non-commercial way: when individuals, singly, or in association, make the like addition, it is most commonly in a commercial way; — though, in a non-commercial way, it is natural that these coiners of money at the public expense — these uncommissioned sovereigns, or unpunishable and irreproachable robbers (for they may be called both or either,) should put off as much of it as they can get anybody to take.

Whether by governments or individuals, it may now be seen at what expense the profit is acquired, and at how much cheaper a rate the end, whatever it be, would be accomplished without any such addition by money drawn out of the old stock.

* This is what governments should consider, when they engage to make payments of money in large masses at once to governments or individuals in foreign countries.

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§ 6. *Non-agenda — Broad measures.*

Example 3. Forced reduction of the rate of interest.

Of reducing the rate of interest allowed to be given by individuals for money borrowed of individuals, the principal mischief consists in another sort of unproductive income tax, imposed upon all such individuals whose income arises out of a mass of money lent out at interest to individuals; — the produce of which tax, instead of being paid in to the public treasury for the service of the public, and in lieu of the burthen which would otherwise be to be imposed to the same amount in some other shape, is made over gratis to those whose circumstances oblige them to borrow money, or enable them to borrow it with a profit.

It imposes not, as in the former case, an indirect unproductive income tax, but a direct one. It is not, as in the case of the increase of money, gradual, and in its amount in some measure uncertain and questionable, but sudden and determinate. Reduction from 5 to 4 per cent. would be a tax of exactly 4s. in the pound.

As to the effect in the way intended, it would be purely illusory. To the proportion of money employed in the shape of capital it would make no addition: if by impoverishment it forced some who, by anterior opulence, had been either withholden from trade or withdrawn from it, to embark in trade so much capital as they thus embarked in a trade of their own, so much would they withdraw from the trade of those other traders, to whom otherwise it would have been lent.

Instead of adding to, it would defalcate from the aggregate mass of wealth. Being a tax on money, lent in the shape of capital within the country, it would in effect be a prohibition — prohibiting the keeping it there, and under a penalty equal to the amount of the tax. It would have the effect of a bounty on the exportation of it — on the exportation of it to any country where any rate of interest higher than the reduced rate would be to be had.

The expectation that the reduction of interest would produce an addition to the aggregate mass of wealth, is an illusion which has its source in another illusion. Increase of wealth, though not the effect, is apt to be an accompaniment of a reduction in the rate of interest. As capital increases, wealth increases; — and as capital increases, if the effectual demand for capital (for money in the shape of capital) do not increase in so great a proportion, men will not give so high a price for the use of it as they did before. The reduction in this case is the result of *freedom;* and though it do not itself increase wealth, it cannot take place any further than as wealth is increased by other causes. The reduction here contended against is the product of *coercion:* and whenever the illusion prevails, it may be carried into effect at any time, in the poorest country as well as the richest, in the most declining as well as the most prosperous, accelerating and aggravating the decline.*

The mischief that would be produced by a *reduction* in the rate of lawful interest, is over and above the constant mischief produced by the fixation of that rate.

§ 7. *Rates of interest — evils of fixation.*

If it be reasonable for legislators to encourage inventive industry by fictitious rewards, it is much more reasonable that they should not oppose obstacles to the productiveness of natural rewards.

The natural reward of inventions, when carried into effect, is the profit to be derived from them in the way of trade. But all trade requires capital. If the inventor have it of his own, it is well; if not, he must seek it from others. Many circumstances, however, conspire to hinder his obtaining it.

Does he endeavour to borrow it, upon what conditions can he hope to find a lender? Upon the ordinary conditions, it is naturally impossible that he should find one. A new undertaking cannot fail of being hazardous, if it were only because it is new. It is therefore necessary to grant to the lender an advantage proportionate to the apparent degree of risk. There are two methods of granting this advantage: the English laws proscribe them both. One method consists in granting interest at a rate superior to the ordinary rate: but this is prohibited by the laws fixing the rate of interest. This prohibition is partly inefficacious, and partly pernicious; that it was altogether useless, would be its greatest elogium.†

The second method consists in granting a variable interest, proportioned to the profits of the undertaking.‡

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* In Ireland, in 1788 or thereabouts, the reduction of the rate of interest from 6 to 5 per cent. was proposed in Parliament as a means of increasing wealth: but though proposed by the administration there, was rejected after a hard struggle. "*The Defence of Usury,*" which I sent over at the time, contributed to throw out the measure, as Parnell, then Chancellor of the Exchequer, very good-humouredly acknowledged to me.

† For the proof of these positions, the reader is referred to Mr. Bentham's "*Defence of Usury, showing the impolicy of the legal restraints upon pecuniary bargains.*" Inconsistency is the natural companion of laws dictated by narrow views: it it is lawful to lend or borrow at any rate of interest in maritime enterprises; as if the pretended dangers and pretended abuses, which render the indefinable evil named usury so much the object of dread, could only exist upon dry land, and depended upon the solidity or fluidity of the element upon which the enterprises were carried on.

‡ In England, a capitalist cannot employ any portion of his capital in trade, without being considered a trader, and, consequently, responsible in the whole extent of his fortune. There is not statute law to this effect, but it is said to be a rule of common law.

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In France, there is one branch of commerce at least, in which it is possible to limit the portion of property that one is willing to risk. It is in the business of banking. The sum employed in this manner is said to be *en commandite*. If this liberty be useful in this branch of commerce, why should it not be equally so in every other, and especially in newly-discovered branches, which have so many natural obstacles to overcome, which it is needless to increase by legal interference? This liberty, under certain restrictions for the prevention of monopolies from the unrestrained accumulation of capital, has been established in Ireland. When will England have the wisdom to imitate this example?*

An inventor, therefore, in want of funds can only apply to a tradesman or merchant to enter into partnership with him; but persons engaged in business are those who have the least portion of disposable capital; and as they are enabled to make their own terms, inventive industry is often stifled or oppressed.

Were it lawful for every one to engage in commercial undertakings for a limited amount, how many facilities would be afforded to men of genius! All classes of society would furnish assistance to inventive industry: those who wished to risk only a small sum — those who could annually dispose of a certain sum, would be enabled to engage in this species of lottery, which promised to yield them an interest above the ordinary rate. The most elevated classes might find an amusement in descending into the territories of industry, and there staking a small part of that wealth which they risk upon games of chance. The spirit of gaming, diverted from its pernicious direction, might serve to increase the productive energy of commerce and art.

There are some who are natural enemies to merit of every kind: every conquest achieved by industry in the career of invention, is a loss to them — every discovery an injury. Common-place men have a common interest, which they understand but too well: it is, that all should be common-place like themselves. It is to be regretted that Adam Smith, in his "Wealth of Nations," — a work which will rise in public estimation in proportion as genius shall be held in honour — should have furnished arms which the adversaries of genius may direct against that work itself. It is to be regretted that, under the odious name of projects, a name applied to the most useful enterprises, even to the moment when they receive the sanction of success, they may there be seen indiscriminately stamped with the seal of opprobrium, and indiscriminately enveloped with contempt.

It is not only that he may prevent prodigals from obtaining money, but that he may prevent its reaching the hands of projectors, whom he places with them upon the same level, that he approves of the fixing of the rate of interest upon the footing upon which he found it. "If the legal rate of interest in Great Britain, for example, were fixed so high as 8 or 10 per cent., the greater part of the money which was to be lent, would be lent to prodigals and projectors, who alone would be willing to give this high interest. Sober people, who will give for the use of money no more than a part of what they are likely to make by the use of it, would not venture into the competition. A great part of the capital of the country would thus be kept out of the hands which were most likely to make a profitable and advantageous use of it, and thrown into those which were most likely to waste and destroy it. Where the legal rate of interest, on the contrary, is fixed but a very little above the lowest market rate, sober people are universally preferred as borrowers, to prodigals and projectors. The person who lends money gets nearly as much interest from the former as he dares to take from the latter, and his money is much safer in the hands of the one set of people, than in those of the other." †

This is not the only passage in which this author attacks projectors (see b. i. ch. iv.;) but it is here that he attack them more directly; whilst as to *prodigals*, it has been elsewhere shown that it is not to them that money is lent, or that any are willing to lend at extraordinary interest. Friends will either not lend at all, or will lend at the ordinary rate. Strangers will only lend, to those who are without industry, upon security. But he who has security to offer, has no need to give a halfpenny more, because he is a prodigal: it is upon his security that the money will be lent, and not upon his character. Whether the security offered be present or future, certain or contingent, produces no difference: a future or contingent security, by means of a valuation, becomes as good a pledge as if it were present or certain. In a word, if money be lent upon the industry of the borrower, it is lent not to a prodigal, but to a projector. It is therefore upon the latter class alone, that the burthen of these prohibitory laws presses.

An opinion which derives all its force from the authority of the individual who publishes it, cannot be better combated than by that authority itself.

1. The prosperity of England has been progressive, ever since the number of projectors has been not only in an uninterrupted, but in an accelerated state of increase; — 2. The

* This has been partially accomplished by 7 W. IV. & 1 Vict. c. 73, which empowers the crown to limit by patent the responsibility of the partners of trading companies. — *Ed.*

† Wealth of Nations, b. ii. ch. 4.

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aggregate of the good economy has always been greater than the aggregate of the bad; — 3. With respect to commerce, each individual is a better judge of his own interests than government can be for him; — and 4. General laws must be much more defective with respect to commercial regulations. The members of a government may take notice of particular cases, but general laws can never regard them.

These are the general propositions of the work of Adam Smith; — truths precious and irrefragable, which no one has more successfully laboured to unfold than this illustrious politician. But if these principles are followed out, no laws ought to exist for the restraint of projectors, and for preventing them from obtaining loans of the capital of which they stand in need.

The censure which condemns projectors, falls upon every species of new industry. It is a general attack upon the improvement of the arts and sciences. Everything which is *routine* to-day was originally a *project;** every manufacture, how *old* soever it may be, was once *new;* and when new, it was the production of that *mischievous* and bold race who ought to be destroyed—the race of projectors!

I know not what can be replied to this, unless it be said that the past projects have been useful, but that all future projects will not be so. Such an assertion would, however, require proof, strong in proportion to its opposition to general opinion. In every career, experience is considered as worth something. The warning to be derived from past failures may contribute to future security, if not to success.

Were it even proved that no projector ever engaged in a new branch of industry without being ruined, it would not be proper to conclude that the spirit of invention and of projects ought to be discouraged. Each projector, in ruining himself, may have opened a new path, by which others may have attained to wealth. So soon as a new die, more brilliant or more economical than the old ones, a new machine, or a new practice in agriculture,—has been discovered, a thousand dyers, ten thousand mechanicians, a hundred thousand agriculturists, may reap the benefit: and then — though the original author of the invention have been ruined in the bringing the discovery to perfection — as it respects the national wealth, of what consequence is this, when considered as the price of so much gain?

That restrictions of this nature are inefficacious, has been successfully shown by Adam Smith himself.* But if inefficacious, this is sufficient reason for their condemnation: unless they effect the purpose designed, they are positively mischievous.

They tend, in the first place, to drive away useful projectors. I do not say that they drive away all: had that been the case, we should not have attained our present degree of prosperity. But they drive away a part: unhappily, we cannot know what part, nor how great a part of their number. The talent required for operating upon matter, or directing the powers of nature, is extremely different from that required for operating upon the mind — the talent of meditating in a study, and thereby making discoveries, from that requisite for making known those discoveries to the world. The chance of success in the career of invention is in proportion to the talent of the individual; the chance of obtaining a loan of capital from another to make an invention productive, is in proportion to his reputation. But this latter, far from being in direct, is naturally in inverse proportion with the former. The more unaccustomed an individual is to society, the greater his dread of mingling in it, the less is he at his ease — the less is he master of his faculties, when he is obliged to mingle with it. The effect produced upon the mind of the individual who has, or who supposes that he has, made a great discovery, is a mixture of pride and timidity, both which feelings concur in alienating the minds of men, and diminishing the probability of success in every enterprise, inasmuch as it may depend upon the degree in which such individual succeeds in rendering himself and his projects estimable in the eyes of others. This pride has for its cause the superiority which he believes himself to possess above them; this timidity is caused by the faint hope he possesses of making them sensible of this superiority. But though pride united with courage is one of the most powerful means of subjugating men, pride united with timidity is one of the most certain causes of exposure to their aversion and contempt. That disposition, which under the name of modesty is so much praised as a companion well adapted to the introduction of true merit, and which is so necessary when inferiority of situation will not allow the employment of boldness in the service, is not true timidity, but skill which has learnt to assume this appearance; it is skill, which to strength, and consciousness of that strength, unites the knowledge of when, and how, and in what sense, and in what proportion, this strength ought to be displayed, for the most favourable exhibition of its pretensions; and when, and how, and in what sense, it ought to be hidden, that the protector whose assistance is desired, may enjoy the feeling of his own superiority. If ever timidity has effected anything at the expense of that assurance which assumes its appearance, it has been when allied with beauty, which causes everything to be forgiven, and which nothing can resist. Separated from this powerful protec-

* See b. i. ch. ix.

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trix, it labours in grief, in darkness, in awkwardness, embarrassment, and false shame — the bugbears of love and of esteem, but the frequent and afflictive companions, and most cruel enemies, of merit and solitary genius.

Not to speak of the obstacles which oppose the progress of an inventor incumbered with his projects and his wants, before he reaches the anti-chamber of the rich, or the noble, whom it may be necessary to persuade — suppose these obstacles overcome, and that he is admitted to their presence; how will the poor inventor, the necessitous man of genius, behave when he has arrived there? Oftentimes he will lose his presence of mind, forget what he was about to say, stammer out some unconnected propositions; and finding himself despised, indignant that his merit should be thus treated, he will retire, resolving never again to expose himself to such an adventure. And even when he is not devoid of courage, there is nothing more different, though in certain points the connexion may appear most intimate, than the talent of conceiving new ideas of certain kinds, and the talent of developing these same ideas. Altogether occupied with the idea itself, the inventor is most frequently incapable of directing his attention to all the accessories which must be re-united before his invention can be understood and approved: his attention being entirely occupied with what is passing in his own mind, he is incapable of attending to what passes in the minds of others — incapable of arranging and directing his operations, so that he may make the most favourable impression upon them.

Thus the ingenious philosopher, who has delivered the most excellent instructions respecting the art of developing the thoughts of others, and who possessed in so perfect a degree the talent of developing his own, well knew how necessary it was, that in every career of invention except that of eloquence, minds should be attended by an accoucheur. How many difficulties did not Diderot experience in effecting this development — he who possessed this talent in so excellent a degree — where the two parties were agreed, had a common interest, and were equally well disposed! How numerous were the difficulties experienced by the ingenious artists of every description to whom he applied, in making him comprehend the fruits of their studies, when they had for their interpreter the man the most capable and the best disposed to understand them! How much more difficult would they have found it, had they been applicants for the assistance necessary to render their projects available to a rich ignoramus, filled with the idea of the necessity which existed for his assistance, and puffed up with that pride which commonly accompanies wealth, when unattended by that politeness which education teaches, and full of that distrust which a poor projector cannot fail to inspire in the mind of an individual favoured with the gifts of fortune!

Should the inventor succeed in making his plan understood, he will still find it difficult to make the interest of the capitalist accord with his desires: it is in this respect that the prohibition displays its mischievous qualities. How shall the poor inventor dare to propose a loan at the ordinary rate of interest? This rate may at all times be obtained without risk: where, then, would be the advantage to the capitalist in such a bargain? Is it possible that it could be otherwise than disadvantageous to him? A loan at the ordinary rate of interest cannot be hoped for; it is only to a most intimate friend that such a loan would be granted. Deprived of this resource, how shall he dare to propose to the individual whose assistance he seeks, to expose himself to the rigour of the laws? Scarcely daring to ask for the assistance he needs, upon the most secure and unexceptionable conditions, how shall he propose conditions which the laws consider criminal? Whilst there are laws against usury, it may be said, there will still be usury. Yes, and whilst there are laws against theft, there will still be thieves: does it follow that the laws which forbid theft are without effect, and that theft is as common as if these laws did not exist?

In the same proportion as the tendency of these prohibitory laws is unfavourable to true merit in the career of invention, is it favourable to the cheat which assumes the appearance of merit, were it only by the advantage given to imposture, by preventing merit from entering into the competition. The essential requisite is not merit, but the gift of persuasion: this gift most naturally belongs to the superficial man, who knows the world, half enthusiast and half rogue; and not to the studious and laborious individual, who is only acquainted with the abstract subjects of his studies. It is true, that at all times truth possesses powerful advantages; but these advantages are less in proportion as the career to which it relates is more removed from the ordinary routine, respecting which ordinary minds are capable of forming a judgment upon what is presented to them. It has therefore happened, that of all projectors, those have been treated with the greatest confidence, whose projects are now known to have been founded upon no basis of truth. Were it possible to ascertain the amount furnished under the existing laws against usury by capitalists, to the authors of useful and practicable projects, it would most probably be found less than the amount which in the same space of time has been drawn by the professors of alchemy from the avaricious credulity of the ignorant or half learned.

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Truth possesses, however, this advantage over error of every kind: it will ultimately prevail, how frequent or how deplorable soever may have been the disgraces it has undergone. This error respecting prohibitory laws is nearly discredited—this source of delusion is nearly closed for ever. As the world advances, the snares, the traps, the pitfalls, which inexperience has found in the path of inventive industry, will be filled up by the fortunes and the minds of those who have fallen into them and been ruined. In this, as in every other career, the ages gone by have been the forlorn hope, which has received for those who follow them the blows of fortune. There is not one reason for hoping less well of future projects than of those which are passed; but here *is one* for hoping better.

The more closely the reasons, on account of which Adam Smith would have desired to discourage projectors, are examined, the more astonishing it appears that he should have so widely deviated from the principles he had himself laid down. It is probable that his imagination had been pre-occupied with the idea of certain incautious or dishonest projectors, the history of whose proceedings had fallen under his own observation, and that he had a little too promptly taken these few individuals as exact models of the whole race. To preserve himself from the error of too hasty and indiscriminate generalizations, never to allow any proposition to escape without having made all the reservations necessary to confine it within the limits of the exact truth, is the last boundary, and even now the ideal boundary, of human wisdom.*

Nothing would more contribute to the preliminary separation of useless from useful projects, and to secure the labourers in the hazardous routes of invention from failure, than a good treatise upon projects in general. It would form a suitable appendix to the judicious and philosophical work of the Abbé Condillac upon Systems. What this is in matters of theory, the other would be in matters of practice. The execution of such a work might be promoted by the proposal of a liberal reward for the most instructive work of this kind.

A survey might be made of the different branches of human knowledge; and what each presents as most remarkable in this respect might be brought to view. Chemistry has its philosopher's stone; medicine its universal panacea; mechanics its perpetual motion; politics, and particularly that part which regards finance, its method of liquidating, without funds and without injustice, national debts. Under each head of error, the insuperable obstacles presented by the nature of things to the success of any such scheme, and the illusions which may operate upon the human mind to hide the obstacles, or to nourish the expectation of seeing them surmounted, might be pointed out.

Above all, dishonest projectors, impostors of every kind, ought to be depicted; — the qualities of mind and character which they possess in common should be described; their volubility, their rapidity; that lightness, natural or affected, with which they treat the arguments opposed to them; that manner which they have, and which for the accomplishment of their ends it is necessary they should have, of declaiming, instead of analyzing and reasoning—of flying off in tangents when they are pressed — of giving birth to incidents — of pretending to be tired with the species of opposition they experience—of attaching themselves to the manner in which questions and doubts, or arguments, are proposed to them, instead of to the foundations of things themselves — of complaining of the prejudices which they pretend are experienced against them — and in quitting the ground under those circumstances, in which, if they were sincere, it would be most proper for them to maintain themselves there.

But throughout the whole work, that tone of malignity which seems to triumph in the disgraces of genius, and which seeks to envelope wise, useful, and successful projects, in the contempt and ridicule with which useless and rash projects are justly covered, should be guarded against. Such is the character, for example, of the works of the splenetic Swift. Under the pretence of ridiculing projectors, he seeks to deliver up to the contempt of the ignorant, the sciences themselves. They were hateful in his eyes on two accounts: the one, because he was unacquainted with them; the other, because they were the work, and the glorious work, of that race which he hated ever since he had lost the hope of governing part of it.

The projectors who seek to deceive ought to be unmasked — those who are deceived, to be instructed: the interests of science and justice equally demand that they should be distinguished. I cannot discern what purpose ridicule can serve, if it be not to confound the distinction between useless and useful projectors.

In conclusion, some general counsels might be added for the use of those who, little versed in the fundamental sciences in which the respective projects take their rise, may find themselves in a situation to be addressed by the author of a project, with the design of

* Adam Smith, after having read the letter upon *Projects*, which was addressed to him, and printed at the end of the first edition of "*The Defence of Usury*," declared to a gentleman, the common friend of the two authors, that he had been deceived. With the tidings of his death, Mr. Bentham received a copy of his works, which had been sent to him as a token of esteem.

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obtaining their assistance. In effect, it is true that the whole work would be a collection of more or less approved counsels; but in making the recapitulation, some general remarks might be added, which would not have been suitable elsewhere, but which might be particularly useful here. They might, for example, be advised to apply to those learned individuals who would be able to supply their ignorance; the class of learned men who ought to be found competent judges in each department might be pointed out; instructions might be furnished, to enable them to judge of the counsels of the judges themselves, by warning them of the interests and prejudices, to the seduction of which these judges may themselves be exposed.

§ 8. *Non-agenda — Broad measures.*

Example 4. Increasing land — viz. by colonization.

Land is worth nothing, but in proportion as labour is applied to it. Land at a distance is worth less than land at home, by the amount of all the distance. Of the mass of labour which is employed in adding to real wealth, no inconsiderable portion is employed in lessening the expense of carriage — in reducing the expense of carriage from a great distance, to a level with the expense of carriage from a less distance. If it could be done without destruction to existing capital, and above all without vexation, and destruction of security of property, wealth might be increased by taking the existing population, and transplanting it from greater distances with reference to the metropolis, to lesser distances.

Land newly acquired, especially in the way of colonization, is acquired at a greater distance. The foundation of a colony is an introductory expense, — the government of it a continual standing expense, — war for the defence of it an occasional one. All this requires money: and money is not to be had for these expenses but from taxes. To the mother-country, the positive profit from a colony is equal to 0; the negative profit, the loss—the defalcation from national wealth—is equal to the amount of such taxes.*

When an excess of population in relation to territory exists or is foreseen, colonization is a very proper measure. As a means of increasing the general wealth of a country, or of increasing the revenue of the mother-country, it is a very improper measure. All the common ideas upon this subject are founded in illusions.

That colonies add to the general wealth of the world, is what cannot be doubted; for if labour be necessary to production, land is no less so. The soil also of many colonies, independently of what it annually produces, is rich in raw materials, which only require that they should be extracted and carried away, to give them value. But this wealth belongs to the colonists — to those who occupy the land, and not to the mother country.

When first established, colonies are not in a condition to pay taxes: in the end, they will not pay them. In order to establish them — to protect them — to keep them in dependence, expense is required; — and all these expenses must be discharged by taxes levied upon the mother-country.

Colonization requires an immediate expense — an actual loss of wealth, for a future profit — for a contingent gain. The capital which is carried away for the improvement of the land in the colonies, had it been employed in the mother-country, would have added to its increasing wealth, as well as to its population, and to the means of its defence; whilst, as to the produce of the colonies, only a small part ever reaches the mother-country.

If colonization be a folly when employed as a means of enrichment, it is at least an agreeable folly. New enjoyments, insomuch as enjoyments depend upon the novelty and variety of objects, result from it. The substitution of sugar for honey — of tea, coffee, and chocolate, for the beer and meat which composed the breakfast of maids of honour in the reign of Elizabeth — the indigo which varies our dyes — the cochineal which furnishes the most brilliant scarlet — the mahogany which ornaments our apartments — the vessels of gold and silver which decorate our tables, — are all sources of enjoyment, and the pleasure which results from these objects of luxury is in part the profit of colonization; whilst the medicinal and nutritive plants which have been received from the colonies, in particular bark and potatoes, are possessed of much superior utility.

Novelty and variety, in respect of means of enjoyment, add nothing to the quantity of wealth, which remains as it was, if the old

* When, at the expense of a war which has cost a hundred millions of money, and in which a hundred thousand lives have been sacrificed, England has got a new colony, — whatever portion of wealth in the shape of capital is *transferred* to the new spot, the Englishman considers as *created*. For a few *negative* hundred thousands a-year, he looks upon the *positive* hundred millions as well bestowed. On the strength of this negative increase in opulence, the Englishman increases in insolence; the German envies him; the Frenchman would devour him; — and thus it is that wars are never to have an end.

It is true, that by the export of capital, a check is applied to the virtual income tax imposed upon fixed incomists by the reduction effected in the rate of interest by the continually increasing *ratio* of that part of the mass of money which is employed in the shape of *capital*, to the remainder which is employed in the shape of expenditure of income, but this is a good which is effected without being intended to be done.

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productions are supplanted by the new ones. It is thus also with new fruits, new flowers, new colours, new clothes, new furniture, if the new supplant the old. But as novelty and variety are sources of pleasure, in proportion as they are increased, wealth increases also, if not in quantity, at least in value. And if these new wants are incentives to new labour, a positive increase of real wealth results from them.

These advantages, such as they are, can only be derived from a colony situated in a climate whose productions cannot be naturalized in the mother-country; whilst, as to the mines of Mexico and Potosi, their effect has been to add to the quantity of vessels composed of the precious metals, and to the quantity of coin. The addition to the vessels increases the amount of real wealth — the addition to the coin has all been lost: the new mass of gold and silver has had no other effect than to depreciate the old, and to diminish, in the same proportion, the value of all pecuniary revenues, without adding to the amount of real capital or future wealth.

However, in taking all interests into the calculation, it is certain that the welfare of mankind has been increased by the establishment of colonies. There can be no doubt on this subject, in respect to the nations who by degrees have become established there, and who owe their existence to colonization. The mother-countries also have themselves gained in happiness in another point of view. Let us take England, for example. According to the progress which population has made during the last century, it may be supposed that it would soon have attained its extreme limits — that is to say, that it would have exceeded the ordinary means of subsistence, if the superabundance had not found means of discharging itself in these new countries. But a long time before population has reached these limits, there will be a great diminution of relative opulence, a painful feeling of general poverty and distress, a superabundance of men in all the laborious classes, and a mischievous rivalry in offering their labour at the lowest price.

For the benefit of mankind at large, it is desirable that the offsets which are to be employed as new plants should be taken from the most healthy stocks and the most flourishing roots; that the people who go forth to colonize unoccupied lands, should go forth from the nation whose political constitution is most favourable to the security of individuals; that the new colonies should be swarms from the most industrious hive; and that their education should have formed them to those habits of frugality and labour which are necessary to make transplanted families succeed.

It may often be advantageous for colonies to remain a long time under the government of the mother-country, provided always that such government be what it ought to be.

It would, without doubt, have been advantageous to Egypt to have remained under the government of Great Britain — a government which would have bestowed upon it peace, security, the fine arts, and the enjoyment of the magnificent gifts which nature has lavished upon it. But in respect to wealth, the possession of Egypt, far from being advantageous to England, would have proved only a burthen.

I hear a universal cry raised against this paradox. So many profound politicians, divided upon every other point, are unanimous upon the importance of colonies, — are they only agreed that they may fall into an error? So many merchants, — have they deceived themselves in so simple a calculation as that of the profit or loss of colonial commerce? The experience of two or three centuries,— has it not opened the eyes of governments? would it not be extraordinary that they should still obstinately sustain the enormous weight of these distant establishments, if their advantages were not clear and manifest?

I might reply, that a long train of alchymists, after all the misfortunes of their predecessors, long continued obstinately to seek after the philosopher's stone, and that this great work yet has its partisans; — I might reply, that many nations in the East have, during many ages, been governed by astrology;—I might enumerate a long list of errors which have misled both governments and people. But a question of this nature ought not to be obscured by declamation. He who alleges the number of partisans by which a system is supported, instead of supporting it by proofs, desires to intimidate, and not to convince his adversery. Let us examine all the arguments by which the advantages of colonies, in respect of wealth, have been endeavoured to be proved: we shall not find a single one which is not in opposition to the most firmly established principles of political economy.

I. *The wealth of the colonies is poured into the mother-country: it is brought thither by commerce; it consequently animates manufactures, and they support the large towns: the prosperity of Bordeaux, for example, is one proof; its wealth depends upon its trade with the West Indies.*

This reasoning proves nothing in favour of a system of colonies: there is no necessity for governing or possessing any island, in order that we may sell merchandise there. The inhabitants of the Antilles stand in need of the productions of England and France: were they independent states, it would still be necessary that they should buy them: during their state of dependence, what can they do more? They will not give their sugars to the

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mother-country; they exchange them for corn and cloth. Those who supply these commodities, if they had not sold them to these parties, would have sold them to others. Suppose that the inhabitants of St. Domingo, in place of buying their corn in France, were to buy it in England; France would lose nothing, because, on the whole, the consumption of corn would not be less: England having supplied St. Domingo, would not be able to supply other countries, which would be obliged to supply themselves from France.

Trade is in proportion to capital. This is the principle: the total amount of trade in each country is always in proportion to the capital which each country possesses. I am a merchant;—I have a capital of £10,000 employed in commerce. Suppose Spanish America were opened to me, could I, with my £10,000, carry on a greater trade than I do at present? Suppose the West Indies were shut against me, would my £10,000 become useless in my hands? should I not be able to apply them to some other foreign trade, or to make them useful in the interior of the country, or to employ them in some enterprise of domestic agriculture? It is thus that capital always preserves its value: the trade to which it gives birth may change its form or its direction, may flow in different channels, may be directed upon one manufacture or another, upon foreign or domestic undertakings; but the final result is, that these productive capitals always produce; and they produce the same quantity, the same value, or at least the difference does not deserve attention.

It is therefore the *quantity of capital* which determines the quantity of trade, and not *the extent of the market*, as has been generally believed. Open a new market,—the quantity of trade will not, unless by some accidental circumstance, be increased: shut up an old market, — the quantity of trade will not be diminished, unless by accident, and only for a moment.

Should the new market be more advantageous than the old ones, in this case the profit will be greater—the trade may become more extended; but the existence of this extra profit is always supposed but never proved.*

The mistake consists in representing all the profit of a new trade as so much added to the amount of national profit, without considering that the same capital employed in any other branch of trade would not have been unproductive. People suppose themselves to have *created*, when they have only *transferred*. A minister pompously boasts of certain new acquisitions, certain establishments upon far distant shores; and if the adventures which have been made have yielded a million of profit, for example, he does not fail to believe that he has opened a new source of national wealth; he supposes that this million of profit would not have existed without him, whilst he may have occasioned a loss: he will have done so, if the capital employed in this new trade have only yielded ten per cent., and that employed in the ordinary trade have yielded twelve.

The answer to this first objection may be reduced to two points:—1. That the possession of colonies is not necessary to the carrying on of trade with them; 2. That even when trade is not carried on with the colonies, the capital which such trade would have required, will be applied as productively to other undertakings.

II. The advocates of the colonial system would consider the above answer extremely weak: they see in this commerce two circumstances which render it more advantageous than that which is carried on with free nations.

"We established," say they, "a double monopoly against the colonist: first, the monopoly of their productions, which we permit them to sell to us alone, and which we thus obtain from them at the lowest price;—secondly, the monopoly of their purchases, which we oblige them to make among ourselves, so that we are able to sell our produce and manufactures to them at a dearer rate than we could to a free people, among whom, other nations would enter into competition with us."

Let us examine the effect of these two monopolies separately.

1. You prevent your colonies from selling their productions to any but yourselves; but you cannot oblige them to cultivate their lands, or to manufacture at a loss. There is a natural price for every commodity, determined by the average rate of profit in commerce in general. If the cultivator cannot obtain this natural price, he will not continue to cultivate; he will apply his capital to other undertakings. The monopoly may produce a *forced reduction* of price *for a time;* but the colonist will not continue to cultivate sugar, if he lose by its cultivation instead of gaining. It is therefore impossible for this monopoly to produce a *constant reduction* of the price of commodities below their natural price; whilst free competition is sufficient to reduce them and keep them at this natural price. The

* Bryan Edwards, in his History of the West Indies, even in exaggerating the utility of colonies, does not suppose the rate of profit upon capitals employed in the plantations greater than seven per cent., whilst it is fifteen per cent. upon capital employed in the mother-country.[a]

[a] This fifteen per cent. was taken from one of the finance pamphlets of Treasury Secretary Rose. Some years before, to a question put by me to the late Sir Francis Baring, the answer was, six per cent. This meant, of course, over and above interest, then at five per cent.—*Communicated by the Author.*

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high price which you wish to remedy by the monopoly is an evil which will cure itself. Large profits in any one branch of trade will draw thither a large number of competitors: all merchants are rivals, and their rivalry naturally produces a reduction of price, till the rate of profit in each particular branch of trade be upon a level with all others.

2. You may oblige your colonist to buy everything of you; but the advantage you expect to derive from this exclusive commerce is deceptive.

If it respect commodities and manufactures, which, owing to a natural superiority, you are enabled to furnish of better quality and at a lower price than foreigners, it is clear that, without monopoly, your colonists would rather buy them of you than of others. The monopoly will not enable you to sell them at a higher price; your merchants, being all in a state of competition with each other, naturally seek to supplant each other by offering their goods at the lowest price possible.

While as to the productions and other articles which you are not able to furnish them upon terms equally favourable with foreigners, it is certain that, without the monopoly, your colonists will not buy them of you. Ought we to conclude, that the monopoly will be advantageous to you? Not in the least: the nation in general will gain nothing. It will only follow, that a species of industry will be cultivated among you, which does not naturally suit you; that bad commodities will be produced, and bad manufactures carried on.

The monopoly is similar to a reward bestowed by government for the maintenance of manufactures inferior to those of other nations. If this monopoly did not exist, the same capital would be applied to other species of industry in which you have a decided advantage. Instead of losing by this arrangement, you will gain a more stable prosperity; since the manufactures which cannot be maintained but by forced means are exposed to a thousand vicissitudes. Observe further, that this monopoly is burthened with a *counter-monopoly*. It is not permitted to you to purchase productions similar to those of your colonies, when you find them elsewhere at a lower price: in compensation for the restraint you impose upon your colonies, you impose one upon yourselves. If they can buy only of you, you can buy only of them. How many inconveniences result from this! When the harvest has been deficient in your colonies, you are not able to supply yourselves from those places where the season has been more favourable; in the midst of abundance, you are suffering from dearth. The monopoly has no effect in lowering the price of commodities; but the counter-monopoly is certain occasionally to produce extraordinarily high prices.

III. The partisans of the colonial system consider colonies under another point of view —the advantage they produce to the revenue. *The taxes levied upon the commerce of the colonies, whether upon importation or upon exportation, produce a revenue which would cease, or be much diminished, if they were independent.*

The taxes levied upon the commerce with the colonies may produce a considerable amount. But if they were free, would they carry on no commerce? Could not this commerce be taxed?—could it not be taxed as heavily as smuggling would permit? England levies taxes upon its commerce with France; France levies taxes upon its commerce with England. The possession of colonies is not necessary to the levying of taxes upon the commerce carried on with them.

I do not repeat here, that your taxes upon the articles of their production, and upon those of your importation from the colonies, are taxes of which you pay every farthing yourself: this has already been demonstrated. What you make the colonies to pay, are only the taxes upon your exportations to them.

I allow that you may thus gain more from your colonies than you would be able to gain from foreign nations; since the foreigners can quit your market when they please, if they cannot obtain among you certain articles so cheap as from others: you are therefore obliged to humour them. But your own subjects, obliged to supply themselves from you, are obliged to submit: you keep them in a prison, and you can put what price you please upon their existence.

An advantage, however, of this nature can only be deceptive. When you have made a prison of your colonies, it is necessary to keep all the doors carefully shut: you have to strive against the Proteus of smuggling; fleets are necessary to blockade their ports, armies to restrain a discontented people, courts of justice to punish the refractory. How enormous are the expenses to be deducted, before this forced commerce will yield a net revenue!

To the amount of the expenses of peace, add that of a single armament — of a single war, and you will perceive, that dependent colonies cost much to the mother-country, and never yield an equal return; that, far from contributing to the strength of a state, they are always its weak and vulnerable points; that they keep up among maritime nations continual jealousy; and that thus the people in France, and in England, are subjected to heavy taxes, which have no other effect than to render the productions of the colonies dearer than if they were free.

To these considerations opposed to the colonial system, drawn from political economy, many others may be added, derived from justice and humanity. This system is

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often mischievous to the people submitted to it; government is almost always, as it respects them, in a state either of jealousy or indifference: they are either neglected or pillaged — they are made places of banishment for the reception of the vilest part of society, or places to be pillaged by minions and favourites, whom it is considered desirable suddenly to enrich. The sovereign, at two thousand leagues distance from his subjects, can be acquainted neither with their wants, their interests, their manners, nor their character. Their most legitimate and weighty complaints, weakened by reason of distance, stripped of everything which might excite sensibility—of everything which might soften or subdue the pride of power, are delivered without defence into the cabinet of the prince, to the most insidious interpretations, to the most unfaithful representations: the colonists are still too happy, if their demand of justice be not construed into a crime, and if their most moderate remonstrances are not punished as acts of rebellion. In a word, little is cared for their affection — nothing is feared for their resentment — and their despair is contemned. The most violent procedures are easily disguised under an appearance of necessity, and the best intentions will not always suffice to prevent the sacrifice of the public to private interests.

If we proceed to consider the situation of colonies in detail, we shall not fail to be struck with its disadvantages. Have the colonists any lawsuits in their mother-country? Their witnesses must cross the seas; they are at the mercy of their agents; years glide away, and the expenses of justice continually accumulate. Is there danger of a revolt? are they threatened by an enemy? Succours arrive when the mischief is done: the remedy oftentimes proves an additional calamity. Do they want food? Famine has laid waste the country before the mother-country has been apprised of their necessities.

These are not mere assertions: they are borne out by a faithful summary of the history of every colony. It is tragical, even to horror! The evils suffered in these establishments, from the ignorance, the weakness, or the insensibility of European governments, exceed everything which can be imagined. When we consider the multitude of men destroyed, the fleets lost, the treasures swallowed up, the establishments pillaged — we are astonished to hear colonies spoken of as a means of enrichment. The natural development of their fruitfulness, and of their industry, has been retarded for ages; they have been covered a thousand times with ruins; nations have impoverished themselves, that they might hold them in servitude, when they might have been sharers in their wealth by leaving to them the enjoyment of the benefits of liberty.

There are many arguments which prove the inutility of their dependence. North America presents a striking fact which ought to enlighten Europe. Has the trade of England diminished, since her former subjects became free? Since she lost these immense possessions, has she exhibited any symptoms of decay? — has she had fewer sailors? — has her maritime power been weakened? She has found a new source of wealth in the independence of the United States. The emancipation of this great country has carried thither a greater number of men, more capital, and more industry. Great Britain, relieved from the expense of defence and government, has carried on a more advantageous commerce with a more numerous and wealthy people; and it is thus that everything concurs in proving, that the prosperity of a nation is a benefit in which all others participate, every one in proportion to his means; and that the colonial system is hurtful to Europeans, only because it is hurtful to the colonies.

Let us, however, see the consequences which we ought to draw from these data.

1. Ought we not to form any colonial establishment? Certainly not with the intention of enriching the mother-country: it is always a certain expense, for a contingent and far distant profit. But we have seen that, as a means of relieving the population — of preventing its excess, by providing a vent for those who find themselves overburthened upon their native soil, colonization offers an advantageous resource; and when it is well conducted, and free from any regulations which may hinder its prosperity, there may result from it a new people, with whom we shall possess all the connexions of language, of social habits, of natural and political ties.

2. Ought colonies already possessed to be emancipated? Yes, certainly; if we only consider the saving of the expenses of their government, and the superior advantages of a free commerce. But it is necessary to examine what is due to colonial establishments — to a family which has been created, and which ought not to be abandoned. Can they maintain themselves? Will not their internal tranquillity be interrupted? Will not one class of the inhabitants be sacrificed to another? for example, the free men to the slaves, or the slaves to the free men? Is it not necessary that they should be protected and directed, in their condition of comparative weakness and ignorance? Is not their present state of dependence their safeguard against anarchy, murder, and pillage? Such are the points of view under which this question ought to be considered.

When we shall have ceased to consider colonies with the greedy eyes of fiscality, the greater number of these inconveniences will cease of themselves. Let governments lay

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aside all false mercantile notions, and all jealousy of their subjects, and everything which renders their yoke burthensome will fall at once: there will no longer be any reason to fear hostile dispositions and wars for independence. If wisdom alone were listened to, the ordinary object of contention would be reversed — the mother-country would desire to see her children powerful, that they might become free, and the colonies would fear the loss of that tutelary authority which gave them internal tranquillity and security against external foes.

§ 9. *Non-agenda — Narrow measures.*

General Observations. — Given in the shape of money, encouragements (so called,) special encouragements, though they miss the good they aim at in the shape of special encouragement, produce, in the shape of general encouragement, another good which they do not aim at — the addition made, as above, by forced frugality at the expense of justice.

Given otherwise than in the shape of money — given by discouragements applied to rival branches — they make no addition to wealth by forced frugality, and therefore make no addition at all to wealth. Discouragements to the import, and thence to the production of foreign goods, are discouragements to the export, and thence to the production, of the home goods that would have been taken by the foreigners in exchange for their goods.

Of the favour shown to home goods in comparison with foreign goods, what is the result? That, in each country, men get their commodities either not so good, or not so cheap, and thence not in such plenty as they would otherwise. Such not only is the result of all these conflicting operations, on the part of all nations taken together, but, to the extent of the operation, would be so in each, even if there were no such retaliation anywhere else.

Giving birth or increase to this or that particular branch of productive industry, under the notion of giving an increase thereby to the aggregate of the national mass of wealth, is either useless or mischievous.

The aggregate mass of money employed in the shape of productive capital, will, in all branches of industry taken together, be productive of so much per cent. upon the amount of it — say 15 per cent., or more or less, according to the average rate of profit upon stock in the country in question, which is in the inverse ratio of that portion of the mass of money in circulation, which is employed within the year in the shape of productive capital, to that portion of it which is employed, as money is employed, by a man who is said to spend his income.*

If in one of these branches the rate of profit be greater than in others — in the one 16 per cent. for example, in the others but 15 — the greater the portion of capital employed in this most productive branch, in preference to the other less productive ones, the greater the annual addition to the aggregate mass of national wealth. But so long as they do but know which of all the branches open to them is most productive, individuals that have unengaged pecuniary capital to employ, are already as completely disposed to employ it in this most profitable branch, as all the exertions that can be employed by government can make them be.†

When, by the exertions of government, a mass of capital, which otherwise would have gone into a branch of productive industry producing but 15 per cent., is directed into a branch producing 16 per cent., the profit by these exertions is not the 16 per cent., but the difference between that and the 15 per cent., viz. the one per cent. It is for the 16 per cent., however, and not the 1 per cent., that credit is commonly taken by those statesmen who go to market for glory with the merit of affording encouragement to trade: and if 10 per cent. be the profit upon stock in the new branch, the whole 10 per cent. is taken credit for as profit by the measure, though 5 per cent. less have been the real fruit of it.

It is for the encouragement or creation of particular branches of trade or industry that statesmen have founded and defended, and conquered or attempted to conquer colonies. It is for the sake of colonies, more than for anything else, that governments have been at the expense of a marine: and reciprocally for the sake of a marine that they have established or defended colonies. In Europe, those who are governed pay for the expense: in America, it is become a principle that those

* Each being multiplied by the number of times it has been employed within the year in making the purchases of which ultimate prices are composed.

† It may, however, happen in some instances, that a branch of industry, which if pursued would be more profitable than any other, requires a mass of capital of such magnitude as individuals separately taken, or in small numbers, are not able to raise. But where this happens, it can only be in consequence of positive regulation of government, which in contemplation of the mischief apprehended from overgrown masses of capital, in certain cases forbids, limits, or seeks to limit, the quantity of capital that shall be applied under one management to any branch of industry, — by limiting the number of individuals who shall be allowed to contribute to it, — or by not suffering a man to embark in trade any part of his property without embarking the whole. In giving an encouragement in this shape, government does little or nothing more than remove obstacles of its own creating, and the good it does, if any, is done at no expense.

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who govern should pay the expense. It is in Hindostan alone, that men pay in wealth for that security which before they never knew: a better bargain on both sides was never made. Ambition, always blind, stumbles sometimes upon profit — sometimes upon a loss, at the command of chance. Man is always ready to govern, no matter what the terms.

Divide productive industry into any number of branches, — for instance four, as with Adam Smith: — husbandry, including mines and fishing; manufactures for home consumption; manufactures for foreign consumption; and carrying trade. Every encouragement afforded to any one of the four branches operates to the amount in discouragement of all the others. If, however, the encouragement be given in the shape of capital granted or lent, it will make an addition, to the amount of it, to the aggregate of real capital, and thence, to the amount of a per centage upon that capital, to the annual aggregate of growing wealth. But the addition thus made to wealth will depend for its magnitude, not on the choice made of the branch of industry, unless as to an extremely minute part of it, but on the addition made to the productive capital of the community at the expense of its income. A mode that would bid as fair for disposing of the money to the best advantage, would be to let a certain number of commercial men draw lots for the money, with liberty to apply it each in his own way. But what, again, would contribute in an equal degree to the same end is, if the nation has a debt, to employ the same sum in the buying in or paying off a portion of the debt; for in that case the receivers of the money, in lieu of annuities, would employ each of them his money in some branch of industry, in his own way of course, under his own management, or that of somebody to whom he lends the money.

The first course is attended with expense, the other not. In the first way, the money being levied by taxes, which whether direct or indirect bear principally upon income, is so much added to national capital at the expense of national income — in the other way, the money is so much taken from income on the same score; but by the redemption of so much capital, it extinguishes or transfers into the hands of government so much income: in the latter case, the community is exonerated from a charge upon its income — a charge to which it continues subject in the other case.

Such are the general grounds, from which it appears, that these narrow measures deserve to be reckoned among the non-agenda; — we shall proceed to examine a variety of examples of measures of these kinds more in detail.

§ 10. *Non-agenda — Narrow measures.*

Example I. False encouragements—loans.

Of all the means whereby a government may give a particular direction to production, the *loan* of pecuniary capital to individuals, to be employed in any particular branch of trade, is the least open to objection.

It ought, however, at all times, to be free from objection with respect to justice and prudence. All the treasure of the government, whence does it arise but from taxes, and these taxes levied by constraint?* To take from one portion of its subjects to lend to another, to diminish their actual enjoyments, or the amount which they would have laid up in reserve, is to do a certain evil for an uncertain good — is to sacrifice security for the hope of increasing wealth.

If loans of this nature were always faithfully repaid, their injustice would be limited to a certain period. Let us suppose that the capital thus employed is £100,000, and that the whole sum has been levied in one year — the injustice of the measure will have begun and ended in a year; and if the money thus lent has produced an increase of industry, it is an advantage to be set in opposition to the evil arising from the tax.

But these loans have a natural tendency to be ill employed, wasted, or stolen. Monarchs, and their ministers, are as liable to be deceived in the choice of individuals as in the selection of particular branches of commerce. Those who succeed with them prove only that they possess the talent of persuasion, or understand the practices of courts; but these are not the things which produce success in trade. It may be seen in the work of Mirabeau upon the Prussian Monarchy, that Frederick II., with all his vigilance and severity, was often deceived by the ignorance or dishonesty of those who obtained from his avaricious credulity loans of this nature. Thus, in the train of the first unjust tax for the formation of the capital lent, follow other taxes, rendered necessary to replace the thefts and dilapidations to which the first has been exposed.

It is also most probable, that the capital thus employed will only be applied upon branches of industry less productive than those towards which it would naturally have directed itself. What is the argument of the borrower? That the trade he wishes to establish is new, or that it is necessary to support an established trade. But why should the government intermeddle with it, if not because individuals who consider their own interests are not willing to meddle with it? The presumption is therefore against the enterprise.

Suppose even, that, by chance, this loan should take the most advantageous direction

* At least where the revenue of the government is not the produce of land, or the interest of money formed by an accumulation of rent. Of this nature is a part of the revenue of the republic of Berne.

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possible, the loan is not justified by this profit: it was unnecessary. For employing capital in the most advantageous manner, it is only necessary that the most advantageous employment should be known. If it be not well employed, it is because a better employment is not known. It is knowledge which is wanted: it is proper to teach, and not to lend. If the government cannot tell which is the most advantageous employment of capital, it is still less able to employ it well; if it can tell which is the best employment, that is all it need do. If the money of government had not taken this direction, that of individuals would, had they been instructed and left free.

There are circumstances in which loans of this nature are always justifiable: when they are not employed for the encouragement of new enterprises, but only to afford support to particular branches of commerce, labouring under temporary difficulties, and which need only to be sustained for a short time till the crisis of peril or suspension is past. This is not a speculation on the part of government, but rather an assurance against a calamity, which it seeks to prevent or to lighten. In such cases of distress, individuals will not of themselves assist the merchants whose affairs are thus in danger: it is necessary, therefore, that assistance be supplied; and, when supplied, it is not in the way of regulation, but of remedy.

§ 11. *Non-agenda — Narrow measures.*

Example 2. Gift, or gratuitous loan.

Were we to judge from the number of instances in which it has been adopted, we should conclude that gratuitous grants of capital for the encouragement of commerce were most excellent measures.

Their inconveniences are of the same kinds as those of loans, but they greatly exceed them in degree. In case of a loan, if it be repaid, the same sum may serve the same purpose a second time; and so of the rest: the oppressive act by which the government obtained the capital need not be repeated. But if, in place of being lent, it be given, — so often as this favour is repeated, so often must the amount be levied by taxes: and upon every occasion it may be said, that the produce of the tax is lost, if we consider the use which might have been made of it in lightening the public burthens.

Sometimes capital has been lent with this view without interest — sometimes at an interest below the ordinary rate. In the first case, if it be repaid, it is not the capital which is lost, but only the interest; in the second case, it is not all the interest, but only the difference between the lower and the ordinary rate. It is still the same false policy as to its kind: all the difference is in the degree.

It may be observed, that gratuitous grants are more likely to be wasted than loans: it may be, because in the latter case responsibility is always incurred: it may be, because money received as a gift tends to produce prodigality: as it has been obtained without labour, it seems to have the less value.

In some cases, capital has been given, not in the shape of money, but in that of goods; by advancing to a manufacturer, for example, those articles which he wants for the completion of his work.

This plan may have the good effect of insuring the employment of the articles furnished upon the intended object. Those articles, however, with which the government interferes, are ordinarily dearer, and worse in quality, than those which the individual, with the same sum of money, could have obtained at his own choice. It is not the best method of treating men worthy of confidence; and it will not succeed with those who are unworthy of trust, since, after they are put in possession of them, they can convert the articles into money, and spend the amount. There may be measures which would obviate this danger: — inspection, suretyship, &c.; but, when it regards a plan radically bad, the discussion of the comparative inconveniences of any particular scheme, whereby the risk may be diminished, is not worth the labour it would cost.

§ 12. *Non-agenda — Narrow measures.*

Example 3. Bounties upon production.

This mode of encouragement much exceeds the two former in the career of absurdity. In the two former cases, it was an expense, a risk, without sufficient reason for supposing it would prove successful, and even without sufficient reason in case of success. But a bounty is an expense incurred with the certainty of not obtaining the object sought, and even because it is certain that it cannot be obtained.

In the case of a bounty upon production, it is not only the end which is absurd, but the means also, which possess this particular character of contributing nothing towards the end.

It is uniformly because the trade in question is disadvantageous, that it is necessary to bestow money upon its maintenance: if it were advantageous, it would maintain itself. It is because the workman is not able to obtain from the buyer a price for his merchandise which will yield an ordinary profit, that it is necessary that he should receive from the government a bounty which shall make up the difference.

Whether the kind of product upon which it operates be advantageous or not, the bounty has no efficacy in increasing the ability of the producer to augment it. Since it follows the production — since he receives it when the thing is done, and not before, it is clear that

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he has possessed other means of producing it. The bounty may have operated upon his *inclination*, but it cannot have contributed to his ability.

Bounties have been bestowed upon particular branches of trade for all sorts of reasons: — on account of their antiquity, on account of their novelty — because they were flourishing, because they were decaying — because they were advantageous, because they were burthensome — because there were hopes of improving them, and because it was feared they would grow worse; — so that there is no species of commerce in the world which could not, by one or other of these contrary reasons, claim this kind of favour during every moment of its existence.

It is in the case of an old branch of trade that the evil of such measures is most enormous, and in that of a new one that its inefficacy is most striking. A long-established branch of trade is in general widely extended: this extent furnishes the best reason for those who solicit these favours for its support; and, to give it effect, it ought at the same time to be represented as *gaining* and *losing*, — gaining, that there may be a disposition to preserve it — losing, that there may be a disposition to assist it.*

In the case of a new branch of trade or industry, the futility of the measure is its principal feature. Here, there is no reason which carries the mask of an apparent necessity — no pompous descriptions of its extent. All which can be alleged is, that, once established, it will become great and lucrative, but what it wants is to be established. What, then, is done for its establishment? Measures are taken, which can only operate after it is established. When the trade is established, it will have such great success that it will yield, for example, fifty per cent. profit; but, to establish it, it requires such large advances, that it is doubtful if those who possess capital will make them, on account of the risks which are almost always inseparable from every new undertaking. What course does the government pursue? Does it give capital? No, this would be foolish. Does it lend capital? No, this would be to run too great risk; it will give a bounty upon the article when it shall have been made: till then, it says, we shall give no money. Thus, to the fifty per cent. you will gain by your merchandize, we will add a bounty of ten per cent. Very well: and, according to this reasoning, at what time will you refuse assistance? You refuse so long as the bestowment of it will be useful — you grant it in order that something may be done, and you do not give it till it is already done by means independent of you.

Mistrust, short-sightedness, a suspicious disposition, and a confused head, are very susceptible of union. Why are bounties preferred to advance of capital? They are afraid of being deceived in the latter case. If £10,000 are given at once, nothing may perhaps be done: to avoid this risk, they give, when the thing is done, £10,000 per annum, which they will never receive again.

Instead of being beneficial, the expense to the state becomes more burthensome in proportion as the trade becomes extended. The bounty instituted for one reason, is continued on an opposite account: at first it was given in order to obtain — in the end it is continued for fear of losing, the particular branch of trade. What would have been necessary for its establishment was a trifle — what must be paid for its continuance knows no bounds.

The capital bestowed upon a new branch of industry for an experiment, is always comparatively a small sum; but what is given as a bounty is always, or at least it is always hoped that it will be, a large one; for unless a large quantity of the merchandize be manufactured and sold, and consequently, unless a large bounty be paid for its production and sale, the object is considered as unaccomplished — it is considered that the bounty has not answered its end.

When the article is one which would not have been manufactured without the bounty, all that is paid is lost; but if it be one of those which, even without the bounty, the manufacturers would have found it their interest to produce, only a portion of the bounty is lost. As it makes an addition, and that a very sensible addition to the ordinary profit of the trade, it attracts a great number of individuals towards this particular enterprise: by their competition, the article is sold at the lowest rate, and the diminution of price is in proportion to the bounty itself (allowance being made for the necessary expenses of soliciting and receiving it.) In this state of things, it would appear, at first sight, that the bounty does neither good nor harm: the public gains by the reduction of price as much as it loses by the tax, which is the effective cause of this reduction.

This would be true, if the individuals who paid the tax in the one case were the same who profited by the bounty in the other — if the measure of this profit were exactly the measure of their contribution — if they received the one at the same time that they paid the other, and if all the labour lost in these

* It is true, though it may not be worth the expense of supporting it by bounties with a view to the increase of wealth, it may be proper to assist it as a means of subsistence or defence. It is still more true, that what ought not to be done with the intention of supporting an unprofitable branch of trade, may yet be proper for preventing the ruin of the workman actually employed in such business: but these are objects entirely distinct.

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operations had not cost anything. But all these suppositions are contrary to fact. There are not two taxes which affect all the members of the state — there is not one which affects them all equally. The tax is paid a long time before the indemnification by the reduction of price is received, and the expenses of this useless circulation are always considerable.

After all that can be said, it is clear that a bounty upon production cannot, in the long run, produce an increased abundance of the article in question, whatsoever may be the diminution of price which may result from it. The profit which the producer will obtain is not greater than before — the only difference is, that it comes to him from another hand. It is not individuals who give it him in a direct manner — it is the government. Without the bounty, those who pay for the article are those who enjoy it: with the bounty, they only pay directly a part of the price — the rest is paid by the public in general; that is to say, more or less, by those who derive no advantages from it.*

Although a bounty upon production adds nothing to the abundance of any article of general consumption, it diminishes the price to the buyer. Suppose that, in Scotland, there were a bounty upon the production of oats, and that the bounty were paid by a tax upon beer brewed from this grain, oats would not be more abundant than before; but they would be sold at a less price to the buyer, (though the merchant would make the same profit) whilst the beer brewed with this grain would be proportionally dearer: the consumer of oats would not find himself richer than before, but for the same price he would have a greater quantity of this grain in the form of food, and less in the shape of drink.

I speak here of relative abundance, in proportion to the ordinary consumption: I speak of superfluity, compared with habitual wants. The lower this commodity is in price, compared with others, the greater will be the demand for it: more will be produced in consequence of the increased demand, but more will not be produced than is demanded; the commodity, as it respects abundance, will remain upon the same footing as before. If a superfluity be required — if a quantity be required exceeding what is commonly produced, other measures must be resorted to than a bounty on production.

If a bounty upon production could be justified, it would seem that it ought to be so in the case where the article thus favoured was an article of general consumption — as corn in England, oats in Scotland, potatoes in Ireland, and rice in India; but it would only appear so as a means of producing equality, and not under *any other* point of view. In fact, this measure does not tend to produce abundance: what it does, is to take the money out of the pockets of the rich, to put it into the pockets of the poor. A commodity of general consumption is always the most necessary of all the articles of life — it is always that of which the poor make the greatest use. The richer a man is, the more he consumes of other commodities besides this universal commodity. Suppose, then, a bounty upon the production of oats in Scotland: if nothing be consumed there but oats, or if there be only a tax upon oats, the persons who reap the advantage of the bounty would be those who bear the burthen of the tax, and that in the same proportion, inasmuch as the expense of levying the tax would be the only result of this measure. But commodities of all kinds are consumed in Scotland, and taxes are there levied upon a great variety of commodities. Oats, the commodity of the poor, being the object not of a tax but of a bounty, and the articles consumed by the rich being the object not of a bounty but of a tax, from the produce of which the bounty upon the production of oats is paid, the result will be, that the poor will obtain the commodity of which they make the greatest use at a lower price.

I agree to this: but does it follow that their condition will be bettered? Not at all. Oats will be sold to the poor at a lower price, but they will have less money wherewith to buy them. All the means of subsistence in this class resolve themselves into the wages of labour; but the wages of labour necessarily depend upon the degree of opulence which a country possesses; that is, upon the quantity of capital applicable to the purchase of labour, in connexion with the number of those whose labour is for sale. The low price resulting from the bounty will produce no advantage to the labourers whilst the wealth of the country remains the same: if the commodity be lowered in price, they will be less paid; or, what comes to the same thing, as they work for a ration of oats, they will be obliged to give more labour for this ration if oats are at a lower price.

All that relates to this mode of encouragement may be summed up in a few words: —

The natural course of things gives a bounty upon the application of industry to the most advantageous branches — a bounty of which the division will always be made in the most equitable manner. If artificial bounties take the same course as the natural, they are superfluous — if they take a different course, they are injurious.

* Adam Smith has made a mistake in saying, that a bounty upon production was a means of abundance, on which account it was better than a bounty on exportation.

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§ 13. *Non-agenda — Narrow measures.*

Example 4. Exemptions from taxes on production.

An exemption from a tax capable of being imposed upon any article in the hands of the maker or seller, is a modification of a bounty upon production: it is a disguised bounty.

This kind of negative favour may be extended to every species of tax upon trade. The methods of encouragement in this way are as numerous as those of discouragement. If, of two rival manufactures, the one be weighed down by a tax, and the other free, that which is taxed is, in respect of that which is not, in the same situation as if both were free from taxes, and a bounty were bestowed upon one.

But each manufacture is a rival to every other. If this rivalry be not *special*, it is at least *general* and indirect. For what reason? Because the power of purchasing is limited, as to every individual, by his fortune and his credit. Every article which is for sale, and which he can desire, is in a state of competition with every other; the more he expends for the one, the less can he spend for the others.

Exemption from taxes upon production cannot be blamed absolutely; for it is to be wished, if the thing were possible, that there were no taxes. But, relatively, any particular exemption may be blamed, when the article exempted has nothing which justifies this particular exemption. If it were equally fit for taxation, the favour granted to it is an injury to other productions.

That an object fit for taxation be exempt, is an evil: it renders necessary some other tax, which by the supposition is less proper, or it allows some injurious tax to remain.

Whilst, as to advantage, there is none. If more of this untaxed merchandise be produced, less is produced of that which is taxed.

The evil of an unjust tax is all the difference between a more or less eligible tax, and the worst of those which exist.

§ 14. *Non-agenda — Narrow measures.*

Example 5. Bounties on Exportation.

In the case of *bounties upon exportation*, the error is not so palpable as in that of *bounties upon production*, but the evil is greater. In both cases, the money is equally lost: the difference is in the persons who receive it. What you pay for production, is received by your countrymen — what you pay for exportation, you bestow upon strangers. It is an ingenious scheme for inducing a foreign nation to receive tribute from you without being aware of it; a little like that of the Irishman who passed his light guinea, by cleverly slipping it between two halfpence.

As a bounty upon production may sustain a disadvantageous trade, which would cease without it, by forming its sole profit, it is also possible that it may for a short time increase the profit of an advantageous trade, which would support itself without this aid.

Does the bounty support a disadvantageous trade? It does not produce a farthing of profit more than would have existed without it. Left to itself, this trade would have ceased and made way for a better; and the community loses the profits of a capital better employed in lucrative undertakings.

Does the bounty support an advantageous trade? The evil, in the end, will be greater, because the extra profit drawing more rivals into this career, their competition will reduce the price so low, that the bounty will constitute at last the whole profit of this trade.

However, till the price be thus reduced, the bounty is a net gain for the first undertakers; and the consumers being our fellow-countrymen, a part of this ill-employed money turns to their advantage by the low price of the commodity.

But in the case of a bounty upon exportation, the nation which pays it never receives any advantage: everything is lost, as if it were thrown into the sea, or at least as if it had been given to foreigners.

Without this bounty, the article would have been exported, or it would not: it would have been exported, if foreigners were willing to pay a price which would cover the expense of the manufacturing, of exporting, and the ordinary profit of trade; it would not have been exported, if they did not offer a sufficient price. In the first case, they would have obtained the article by paying its worth: in the second case, this disadvantageous commerce would not have been carried on.

Suppose a bounty upon exportation: what are its effects? The foreigners who heretofore had found the article too dear, become disposed to purchase it. Why? Because you pay them to induce them to do so. The more government gives to the exporter, the less need the foreigner give. But it is clear that he will not pay more than the lowest price which will satisfy the exporter: he need not give more; since, if one merchant refuse to supply him at this price, another will be quite ready to do it.

Suppose an article of our manufacture, already purchased by foreign nations without a bounty upon its exportation; what will happen if a bounty be given? Solely the lowering of its price to the foreigners. A bounty of one penny for every pound in weight is given upon an article which sold for fivepence per pound; the manufacturer would not have found it worth while to have sold it for less than fivepence per pound; he will now, however, find the same profit in selling it for fourpence, because his own government makes

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up the difference. He will sell at fourpence, because, if he do not, some other will; and because, in this case, instead of selling for fivepence, it may happen that he will not sell at all. Thus the whole which government gives is a net saving to the foreigners: the effect in the way of encouragement is nothing. The whole which is exported with the bounty is neither more nor less than would be without it.*

Though a bounty do not render such a branch of trade *more* flourishing than it would otherwise have been, it will not render it *less* flourishing; but the more flourishing it becomes, the greater will be the loss to the nation.

Disadvantageous branches of trade are often spoken of. People are uneasy—they fear that certain manufactures, left to themselves, will be unprofitable. It arises from error. It is not possible that any branch of trade, left to itself, can be disadvantageous to a nation: it may become so by the interference of government, by bounties, and other favours of the same nature. It is not to the merchant himself that it can become disadvantageous; for the moment he perceives there is nothing to be gained, he will not persevere in it: but to the nation in general it may become so — to the nation, in its quality of contributor; and the amount of the bounty is the exact amount of the loss.

The Irishman who passed his light guinea was very cunning; but there have been French and English more cunning than he, who have taken care not to be imposed upon by his trick. When a cunning individual perceives you have gained some point with him, his imagination mechanically begins to endeavour to get the advantage of you, without examining whether he would not do better were he to leave you alone. Do you appear to believe that the matter in question is advantageous to you? He is convinced by this circumstance that it is proportionally disadvantageous to him, and that the safest line of conduct for him to adopt, is to be guided by your judgment. Well acquainted with this disposition of the human mind, an Englishman laid a wager, and placed himself upon the Pont-neuf, the most public thoroughfare in Paris, offering to the passengers a crown of six francs for a piece of twelve sous. During half a day he only sold two or three.

Since individuals in general are such dupes to their self-mistrust, is it strange that governments, having to manage interests which they so little understand, and of which they are so jealous, should have fallen into the same errors? A government, believing itself clever, has given a bounty upon the exportation of an article, in order to force the sale of it among a foreign nation: what does this other nation in consequence? Alarmed at the sight of this danger, it takes all possible methods for its prevention. When it has ventured to prohibit the article, everything is done. It has refused the six-franc pieces for twelve sous. When it has not dared to prohibit it, it has balanced this bounty by a counter-bounty upon some article that it exports. Not daring to refuse the crowns of six francs for twelve sous, it has cleverly slipped some little diamond between the two pieces of money — and thus the cheat is cheated.

A strife of this nature, painted in its true colours, and stripped of the eclât which dazzles by the magnitude of the object and the dignity of the agents, appears too absurd to be possible; but for one example among a thousand, we may refer to what has happened between England and Ireland respecting the trade in linens.

§ 15. *Non-agenda — Narrow measures.*

Example 6. Prohibition of rival productions.

This pretended mode of encouragement can never be productive of good; but it may produce evil: — *hurtful* or *useless*, such is the alternative.

1. I say *useless*. It is a particular privilege of this exercise of power, to be employed in certain cases without doing any harm; and these cases occur when the branch of production or trade which is prohibited would not have been introduced, even had there been no prohibition. In former times, it was declared felony in England to import *pollards* and *crocards*, a kind of base coin at that time. This prohibition is yet in existence, without producing any inconvenience. If, with the intention of encouraging the increase of poultry, or with any other similarly patriotic view, the importation and increase of phœnixes were prohibited, it is clear that the trade in poultry would neither gain nor lose much.

Among all the species of manufacture which England, with so much anxiety, has prohibited to her colonies, there are many which, in comparison with agriculture, are no more suitable to the Americans than the breeding of phœnixes, the cultivation of pine-apples in their fields, or the manufacture of stuffs from spiders' webs.

Were the articles of foreign manufacture, loaded with the expenses of importation, neither better in quality nor lower in price than the articles of home manufacture, they would not be imported: the prohibition exists in the nature of things.

2. *Hurtful.* By the prohibition of a rival manufacture, you wish to insure the success

* The same effect is produced when it is endeavoured to favour the importation of corn, for example, by giving a bounty to the first importers. Its effect is to increase the price in foreign countries.

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of a favoured manufacture, and you at once create all the mischiefs of a monopoly. You enable the monopolists to sell at a higher rate, and you diminish the number of enjoyments; you grant them the singular privilege of manufacturing inferior articles, or of ceasing to improve them; you weaken the principle of emulation, which exists only when there is competition; in short, you favour the enriching of a small number of individuals, at the expense of all those who would have enjoyed the benefit; you give to a few bad manufacturers an excessive degree of wealth, instead of supplying the wants of ten thousand good ones; you also wound the feelings of the people, by the idea of injustice and violence attached to the partiality of this measure.

Prohibitions of foreign manufactures are most frequently applied to those objects which foreigners can supply less expensively, on account of some peculiar advantage arising from their soil or their industry. By such prohibitions, you refuse to participate in this natural advantage which they enjoy; you prefer what costs you more capital and labour; you employ your workmen and your capital at a loss, rather than receive from the hands of a rival what he offers you of a better quality or at a lower price. If you hope by this means to support a trade which would otherwise cease, it may be supported, it is true; but, left to itself, capital would only leave this channel where its disadvantages are unavoidable, to enter upon others where it would be employed with greater advantage. The greatest of all errors is to suppose, that by prohibitions, whether of foreign or domestic manufactures, more trade can be obtained. The quantity of capital, the efficient cause of all increase, remaining the same, all the increase thus given to a favoured commerce is so much taken from other branches.

The collateral evils of this prohibitory system ought not to be forgotten. It is a source of expense, of vexation, and of crimes.

The expense most evidently lost, is that of the custom-house officers, the inspectors, and other individuals employed; but the greatest loss is that of labour — both of the unproductive labour of the smuggler, and of those who are, or who appear to be, employed in the prevention of smuggling.

To destroy foreign commerce, it is only necessary to sell everything, and to purchase nothing: — such is the folly which has been passed off as the depth of political wisdom among statesmen.

Among the transactions between nation and nation, men have consented, at great expense, to support disadvantageous manufactures, that they may not buy of their rivals. We do not see such monstrous extravagance on the part of individuals. If a merchant were to act thus, we should say he was hastening to ruin. But his interest guides him much better: it is only public functionaries who are capable of this mistake, and they only when they are acting on account of others.

Covetousness desires to possess more than it can hold: malevolence likes better to punish itself than to allow a benefit to an adversary.

To have its eyes greater than its belly, is a proverb which nurses apply to children, and which always applies to nations. An individual corrects this fault by experience: the politician, when once affected by it, never corrects himself.

When a child refuses physic, mothers and nurses sometimes induce it to take it by threatening to give it to the dog or the cat. How many statesmen — children badly educated — persist in supporting a commerce by which they lose, that they may avoid the mortification of allowing a rival nation to carry it on!

The statesman who believes he can infinitely extend commerce, without perceiving that it is limited by the amount of capital, is the child whose eyes are larger than his belly.

The statesman who strives to retain a disadvantageous commerce, because he fears another nation will gain it, is the child who swallows the bitter pill, for fear it should be given to the cat or the dog.

These are not noble comparisons, but they are just ones:—when errors cover themselves with an imposing mask, one is tempted to set them in a light which will show them to be ridiculous.

§ 16. *Non-agenda — Narrow measures.*

Example 7. Prohibition of rival imports.

In regard to the prohibition of rival imports, simply inefficacious or mischievous is here the alternative.

If the foreign article cannot when imported, after payment of the expense of importation, be had as cheap in comparison of its quality as the home article meant to be favoured, it will not be imported; — so long as that is the case, a prohibition is put upon it by nature. If, had it not been for the prohibition, it could have been sold here cheaper, the prohibition is in point of burthen a tax upon us to the amount of the difference in price. I say, in point of burthen: for as to that benefit which it is the property of a real tax to produce, viz. a supply for expenditure, or a relief to an equal amount from the burthen of other taxes, it has no existence. It is upon the same footing with a tax the produce of which, as soon as collected, should be thrown into the sea.

As to the increase of wealth in general, the particular encouragement in question is, for the general reason so often given, of no avail. The quantity of capital, the efficient cause of wealth, remaining the same, whatever is added in consequence to the favoured trade, is so much taken from the rest.

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§ 17. *Non agenda — Narrow measures.*

Example 8. Taxation of rival branches of home manufactures.

The natural and only original object of taxation is revenue: but, considered merely as confined to that object, it does not belong to our present purpose. Measures are however to be considered with regard to their eventual effects of all kinds — as well those which were not designed (if there be any) as those which were.

A tax upon one of two rival branches of trade can have no effect in favour of the other, but in so far as it operates as a prohibition. If the same quantity of the commodity meant to be discouraged, be sold notwithstanding the tax, as would have been sold without the tax, the advantage gained by the commodity meant to be favoured, amounts to nothing.

So far as it operates as a prohibition, we have seen that good it can do none — it only transfers capital from one employment to another, without producing any increase of wealth: harm it may do, and is likely enough to do — though we have seen that it may also happen not to do any.

As a tax, it may do good or harm according to its particular nature:* good, if it stand instead of a worse — harm, if it stand instead of one less burthensome.

§ 18. *Non-agenda — Narrow measures.*

Example 9. Taxation of rival imports.

Whether the article thus taxed in the view of favouring another, be an article of home production or an article of import, makes in point of advantage no sort of difference. As far as it prevents the import, it has the effect of a prohibition: in which capacity we have seen, that with regard to the general increase of wealth, it is of no use. As far as it fails of preventing the import, it gives no encouragement to the particular trade in question; nor consequently to the particular portion of wealth employed in that trade: its effect is to levy money on the subject, in quality of a tax; but the persons on whom the money is levied are our own people, as much as if it were among the articles produced at home. As such, it may either be a good or a bad tax as it may happen; — though in regard to its temporary consequences, it cannot be productive of all the mischief of which a tax on a home manufacture is capable of being productive.

§ 19. *Non-agenda — Narrow measures.*

Example 10. Drawbacks on exportation.

What is called giving a drawback on exportation, is the restitution of a tax already levied; — from the amount already levied in way of a tax, a man is permitted to *draw back* so much of what he has disbursed.

What a bounty on exportation is to a bounty on production, a drawback is to a simple exemption from a tax levied on produce. In the first case of each pair, foreigners come in for their share of the boon indiscriminately with our own people; in the other case, they get the whole of it. In all cases, the expected advantage is equally imaginary.

In one point of view, however, the drawback is a more expensive way of throwing away money than the bounty. In the case of drawback, the money is received with one hand in order to be given back again with the other; and each operation is attended with a separate expense. To this public expense is to be added the private expense, which the individual must be at to pay the money, and get it back again — an expense of which the trouble and loss of time (which in the account of the financier go for nothing) always form a very considerable part, often the most considerable: instances† have not been wanting, in which the value of the supposed favour has been reduced literally to nothing by the trouble of obtaining it.

§ 20. *Non-agenda — Narrow measures.*

Example 11. Non-importation agreements.

Non-importation agreements, as far as they extend, have the effect of prohibitions: — happily they are not so extensive in their action, so frequent, so steady, so well executed.

Good they do none: happily, wanting the force of prohibitory laws, the mischief they do is seldom so extensive.

§ 21. *Non-agenda — Narrow measures.*

Example 12. Premiums for the importation of foreign arts and hands.

That there are cases in which it would be extremely well worth the while of individuals to pay extraordinary prices to get workmen from abroad, is not to be doubted. Meaning to employ my money to the best account in the way of trade or manufacture, and looking round as far as my reach of thought, and faculties and opportunities, will carry me, if I observe a branch of manufacture, for instance, new as yet to my country, and which, if imported from some country abroad, would pay me, for example, five per cent. interest for my capital, more than any other branch I have been able to find, — this five per cent. would be so much more gained to me, and through me to the nation I belong to, than if I had embarked my capital in that one of the old-established trades, which, of all that have fallen

* I mean always in virtue of its destructive properties: for in a general way, no laws except those by which other laws are repealed, can fail of doing harm, as being so much lumber, by the load they add to the system.

† The drawback of the salt duty in favour of fisheries may be mentioned as one which formerly existed.

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under my cognizance, would be the most advantageous. Extra expenses there doubtless are, and difficulties, incident to the business of getting workmen from a foreign country, even if there are no laws in that country or our own to add to the amount; but all difficulties and expenses of this nature I suppose provided for and surmounted, as in many instances they actually have been.

Still, then, the same argument, and still with undiminished force: the more evidently advantageous for the individual the employment of his money in this way, the more evidently unnecessary is it for government to employ that of the nation in this way.

In the first case, the burthen is borne by him who receives the benefit — in the other case, by those who receive no part of it: in the first case, the probability of success in the project, and the security against unnecessary expense, are at their highest pitch — in the other, at their lowest.

On the part of governments in general, the passion for getting arts and hands from abroad does not appear so conspicuous as the dread of losing their own.

§ 22. *Non-agenda — Narrow measures.*

Example 13. Fixation of prices.

The limitation of the price of commodities may have two opposite objects — 1. The rendering them dearer; 2. The rendering them cheaper.

The first of these objects is least natural: so many commodities, so many means of enjoyment; to put them within the reach of the largest number, is to contribute to the general happiness. This motive, however, is not unexampled; and intoxicating liquors are an instance of its exercise. Legislators have often endeavoured, and not without reason, to increase their price, with the design of limiting their consumption on account of their dearness. But imposing a tax upon them suffices to increase their price; there is no necessity for resorting to the method of direct limitation.

Is the design of these limitations the obtaining of the article at a low rate, — the method will scarcely answer its end. Before the existence of the law, the article was sold at what may be called its average or *natural price*, that is to say, it was confined within certain limits — 1. By the competition between the buyers and the sellers; 2. By a competition between the branch of trade in question, and that of other branches to which the merchant might find it to his advantage to transfer his capital.

Does the law endeavour to fix the price at a lower rate than this *average* or *natural price* — it may obtain a transient success, but by little and little this branch of trade will be abandoned. If the constraint be increased, the evil will grow worse; the constraint, in fact, can only act upon the existing stock: this being sold at a forced price, the merchant will take care not to replace it. What can the law effect? Can it oblige him to replenish his storehouse with the same commodities? No legislator has ever attempted it, or at least no one has ever attempted it with success. This would be to convert the officers of justice into commercial agents; it would be to give them a right to dispose of the capitals of the merchants, and to employ the merchants themselves as their clerks.

The most common fixation has been that of the rate of interest. It has already been discussed. (See Ch. III. §§ 6 & 7.)

The fixation of the price of wages (especially with regard to agriculture) has often been proposed, and even carried into effect, for the most opposite reasons: to prevent what is considered as an *excess* — to remedy what has been regarded as a *deficiency*.

In this latter point of view, this measure is liable to great objection. To fix the *minimum* of wages, is to exclude from labour many workmen who would otherwise have been employed; it is to aggravate the distress you wish to relieve. In fact, all that can be done is limited to determining, that if they are employed they shall not receive less than the price fixed; it is useless to enact that they shall be employed. Where is the farmer, where is the manufacturer, who will submit to employ labourers who cost them more than they yield? In a word, a regulation which fixes the *minimum* of wages, is a regulation of a prohibitory nature, which excludes from the competition all whose labour is not worth the price fixed.

The fixation of the rate of wages, in order to prevent their *excess*, is a favour conferred on the rich at the expense of the poor — on the master at the expense of the workman. It is a violation, with regard to the weakest class, of the principles of security and property.

§ 23. *Wealth — Means of Increase.*

If we trace the progress of wealth in its natural channel, we shall clearly perceive that the interposition of government is only beneficial and necessary when employed in the maintenance of security, in the removal of obstacles, or the dissemination of knowledge.

Wealth may be increased —

I. By increasing the efficacy of labour.

II. By increasing the number of labourers.

III. By the more advantageous employment of capital.

IV. By increasing the mass of capital.

V. By means of trade.

I. *By increasing the efficacy of labour.*

This subject might furnish most interesting and instructive historic details: we shall confine ourselves to a simple enumeration of the means whereby it may be accomplished.

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The efficacy of labour may be augmented —

1. By increase of skill and dexterity.

2. By saving the time occupied by superfluous movements.

3. By the invention of machines.

4. By employing, instead of human labour, more powerful and less costly prime movers, — as water, air, fire, explosive powders, and beasts of burthen.

The two first advantages are obtained by the division of labour; the third necessarily results from it. Adam Smith has developed this grand means of attaining perfection with great diligence, and, so to speak, particular affection. He relates, that the process of converting a morsel of brass wire into a pin requires eighteen operations, and employs as many different workmen, of whom the greater part borrow the assistance of machines; — whereby, although ten workmen would not separately have been able to make more than 240 pins a-day, they are enabled to make 4800. It is hence that this little branch of national wealth, which affords a more commodious adjustment than the buckles of the Romans and the skewers employed by Queen Elizabeth, has increased in proportion. What our country people throw away, would have been luxuries in the court of Darius.

5. By the simplification of intermediate processes.

6. By the saving of materials. The extension given to the quantity of gold employed in gilding silver wire, is an example equally suited to astonish the natural philosopher, and to charm the political economist.

Chemistry has introduced a multitude of economical processes into all the arts: it has taught the means of economically applying fuel — of producing great effect with little expense; it has substituted less costly for more expensive materials; it has imitated, and even rivalled, the productions of nature.

7. By the improvement of the products, that is to say, in proportion to the price. It is thus that porcelain has supplanted the coarse pottery of former times: — the potteries of Wedgwood and Bentley have excelled the porcelain of China.

8. By the diminution of the expense of carriage, by the multiplication of roads, canals, and iron railways. The advantage which the Low Countries have derived from their canals is incalculable. Governments may often usefully interfere in respect to these objects, either by advancing the capitals and sharing in the benefit, or by granting to the individuals interested the powers necessary for making arrangements among themselves, and defraying the expense. When, however, it is necessary for a government to take charge of these works, it is a proof that confidence does not exist; I mean confidence in the stability of the actual order of things, and in the protection of the laws. No other circumstance speaks so highly in praise of the British government, as the disposition of individuals to unite in carrying on great undertakings in canals, docks, ports, &c. A disposition to undertake such works denotes the prevalence of a feeling of security, which unites the future to the present, and embraces an horizon of large extent.

The advantage of machines consists in the increased efficacy of labour. To reduce the number of men employed upon any species of labour by half, without diminishing the quantity of the product, is in fact the same thing as doubling the number of men employed, with the same degree of efficacy as before. That which required two thousand men for its performance, being performed by one thousand, there remains one thousand men who may be employed either upon similar or other works.

But this supposes that the workmen, no longer required in the production of a given quantity of labour, are otherwise employed; for if they were without employment, the quantity of wealth produced would remain the same after the invention as before.

If a manufacturer found himself thus in a condition to execute, with one thousand workmen, what had heretofore required two thousand, it appears, at first sight, that the natural result would be, that he would employ the two thousand workmen to produce a double quantity of work. But unless his pecuniary capital be augmented, it will be impossible for him to employ the same number. The new machines, the new warehouses required for this increase of produce, require a proportionate increase of capital. The most ordinary case, therefore, will be the reduction of the number of workmen; and, as it respects them, the consequence is a temporary distress.

It is upon this circumstance that the popular opposition to the improvement of machines depends. It is a very reasonable opposition on the part of the handicraftsmen. It is they who suffer, whilst the benefit is, in the first instance, for the manufacturer, and in perpetuity for the public, who obtain a better article at a less price.

There are two kinds of countries where this objection has no force — countries badly peopled, and countries where the people are slaves. Do you desire an increase of population — do you desire children who may become workmen in future, — I give you full-grown men — workmen actually prepared: you would charge yourself with the expense of their education, — I relieve you of it: you are willing to receive foreigners, and I give you natives. Such is the language an inventor may address to a sovereign; whilst to the individual proprietor he may say, — With one hundred slaves you are now able to raise a

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certain quantity from your mines; with fifty you will in future be able to raise the same quantity. If it were necessary to support the others in idleness, where would be the evil?

In stationary or retrograde countries, where the dismissed workman cannot easily find a new employment to which to apply himself, where there exists no capital ready to furnish him employment that suits him, this objection would not be without force. It is, however, a transient evil, to which transient remedies ought to be applied.

II. *By the increase of the number of labourers.*

I have nothing further to add upon this subject to what is said in the chapter on population (Ch. IV.;) but I shall point out those things which, in an indirect manner, tend to produce this effect.

1. By the banishment of all prejudices unfavourable to labour. Honour has tied the hands of some—religion of others. Some have been kept in a state of perpetual idleness — others in a state of periodical idleness. In some Catholic countries, the saints' days occupy more than one hundred working days. The loss of these days alone ought not only to be considered, but also the bad habits which this idleness encourages. They have not worked upon the saint's day; they do not work on the day following, because they were intoxicated the day past.

2. The amount of labour may be increased by giving productive employments to those classes of men who, owing to their station in life, produce nothing — to prisoners, beggars, monks, and soldiers. It has been pretended that, to make a good soldier, an individual ought to follow no other trade: an exception ought at least to be made in favour of those kinds of labour which may be useful in war, as the digging of ditches, the construction of bridges, the throwing up of embankments, and the formation and repair of roads.* These employments afford an inexhaustible means of increasing the most permanent part of the capital of a nation.

3. Substitute alluring for coercive motives — reward for punishment; with suitable precautions, abolish all services in kind, all forced labour and slavery. A country peopled with serfs will be always poor. Pay for labour in money, and the reward, mingling drop after drop with the labour, will sweeten its bitterness: every free labourer is worth two slaves. This reflection is often presented in this work, but it is so just and favourable to humanity, that it cannot be too often repeated; we ought not to be afraid to repeat it.

III. *The more advantageous employment of capital.*

We have already seen, that under the guidance of individual interest, capital of itself takes the most advantageous direction — at least certainly more advantageous than when under the guidance of government.

Of all employments of capital, the most advantageous for the state is the cultivation of the earth. It is, at the same time, as has been demonstrated by Adam Smith, the most beneficial in itself, and the most attached to the state. Most advantageous: the capitalist must find it nearly as advantageous as any other, since, unless this be the case, he will not engage in it; and this after he has deducted the rent he pays to the landlord, and which often amounts to a third of the produce. It is thus that the state gains by this employment more than it can possibly gain by any other. More attached to the state: the workman may carry away his industry, the money-lender his capital, the merchant may change his warehouses, but the farmer cannot carry away the land.

For the encouragement of this most advantageous employment of capital, what ought government to do? Nothing: that is to say, nothing in the way of positive encouragement; for it cannot too completely remove the clogs and obstacles to the free alienation of landed property,† or too greatly favour the conversion of goods held in common, into individual property.‡

The condition most favourable to the prosperity of agriculture exists when there are no entails, no unalienable endowments, no common lands, no right of redemption, no tithes, or taxes or dues which punish industry, and levy a contribution upon agriculture, increasing in proportion to the expenses incurred, and the greater care paid to cultivation.

Generally speaking, the great landed proprietors give themselves little care about the improvement of their domains. Some leave large tracts of country, sufficient for the maintenance of hundreds of families, in a state of nature, that they may enjoy the pleasures of the chase; others, prodigal in proportion to their wealth, expend everything in present enjoyments, and trouble themselves but little with the future. Where the system of leases and farms is upon a good footing, the evil is not great; but it is altogether otherwise when the administration is in the hands of a superintendent, still less interested than his masters in the increase of the rent. Were

* It is said that the success of the American armies was partly owing to their skill in these employments. Composed almost entirely of husbandmen, they excavated ditches and formed entrenchments and other works connected with camps, with a facility which astonished their adversaries. The Russian armies possess the same advantage in a still higher degree.

† Upon this subject, see Vol. I. *Principles of the Civil Code*, p. 333.

‡ Ibid. Vol. I. p. 341.

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large properties divided into three or four parts, the proprietors would be animated with an entirely different spirit. The spur of necessity would render them intelligent and industrious. Where a nobleman employs twenty gardeners in raising pine apples and taking care of bowling greens. Five manufacturers would employ twenty husbandmen in producing corn for themselves and a hundred workmen. But let it not be supposed that I recommend agrarian laws and forced divisions: this would be to cut off an arm, in order to avoid a scratch.

In the scale of public utility, so far as it depends upon the general wealth, after agriculture come those manufactures whose products are sold within the country; after these, the manufactures whose products are exported; and in the last place, the carrying trade. Adam Smith has demonstrated this. Thus much for theory: it does not follow that in practice it would be proper to favour a branch of industry higher in the scale, at the expense of one which is placed below it. They all exercise a reciprocal influence upon one another, and benefits are divided among them with sufficient equality. If for a moment one branch become more advantageous than the others, a greater number of adventurers are soon drawn towards this side, and the equilibrium is not long in re-establishing itself. If any species of industry be more constantly useful to a nation, it is because the benefit more certainly remains — because the wealth which it produces is more secure.

IV. *By increasing the mass of capital.*

The mass of capital is increased when the products of labour exceed the amount of products consumed.

The addition made to the wealth of a nation in one year, is the total amount of the savings of all the individuals composing that nation in that year: it is the difference between the values produced or imported, and the values destroyed or exported in the course of the same year.

The addition made to the pecuniary wealth of a community is, in the same manner, the difference between the sum produced or imported, and the sum destroyed or exported in the period in question.

In the case of an individual, increase of money is increase of wealth. If his fortune consist to-day of one thousand guineas, and he has two thousand to-morrow, he will be twice as rich as he was the day before: he can command twice the quantity of the products of all kinds of labour.

The case is not the same with a nation. If its coin be to-day £1,000,000 sterling, and to-morrow it were to be £2,000,000, its wealth would not be doubled as was that of the individual. As it respects its internal condition, the nation would not be richer than before: instead of having at its command a double quantity of productions, it would only have the same.

It is true, that in exporting to other nations this suddenly acquired mass, the community in question would obtain an addition to the mass of its non-pecuniary wealth: but in proportion as this exchange is made, the case which we have supposed does not continue the same; it ceases to possess the additional million of coin.

This apparent contradiction between the two cases is easily removed. When an individual finds the quantity of coin which he possesses suddenly doubled, the value of the coin is not diminished by this addition: the community to which he belongs does not possess more than before, supposing that the amount has not been received from abroad. The proportion between the amount of coin and the things to be sold remains exactly the same.

The value of all the things sold in the course of a year is equal in value to the sum of the coin given in exchange for them; that is, to the value of the actual quantity of the coin, multiplied by the number of times it has been exchanged. Each of these masses is equal in value to the other; since, by the supposition, the one has been exchanged for the other.

This equality exists, whatever may be the difference in quantity between these two masses. When the million of coin, circulating three times during the year, has purchased the whole mass of goods which were to be sold, it has given to all its successive possessors the enjoyment of this mass. When, taking the same course, the two millions of coin have produced the same effects, they have only performed what the single million had performed before; since, by the supposition, the mass of goods has not been increased. In other terms, that is to say, the new mass of coin is swallowed up in the general mass of coin, and as much as it has increased its quantity, so much has it diminished its value.

The addition made to the coin of the community produces a proportional increase in the price of all vendible commodities — in the pecuniary price of all commodities not pecuniary; and consequently, it may be, in the price of every article — it may be, in that of the greater number of articles.

If an addition made to the coin of a community be employed in creating a portion of wealth not pecuniary, which would not have been created without it—if it produced by labour or exchange an increase of real wealth, the result is no longer the same. In proportion as the real wealth is increased, the addition made to the coin ceases to produce a diminution of relative value.

In order to simplify the case, and render it

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more striking, I have supposed a large and sudden addition. It is very seldom that an addition of this nature takes place with respect to the precious metals; but it has often happened with respect to paper money.

Thus the increase of the price of commodities, all other things remaining the same, is a proof of an addition to the coin, and a measure of its quantity.

This defalcation of value is equivalent to an indirect tax upon pecuniary revenues — a tax which may continually increase in amount — a tax which benefits those who issue the paper money, and of which the weight presses entirely upon the possessors of fixed revenues. There is a compensation for this tax to producers and merchants, who may raise the price of their commodities to all those who have part of this new money; but those whose fortune consists in a pecuniary revenue which cannot be increased, bear all the burthen.*

When this diminution of revenue takes place gradually, although it be an evil, this evil may result from the general prosperity, and may be compensated by a greater benefit. Losses which occur in the ordinary course of affairs, are experienced and hardly felt; they may be provided against. But when the government itself interferes, by operations whose effects are as great as they are sudden, in order to give a sudden increase to the mass of pecuniary capital, whether metallic or otherwise, it confounds all the calculations of prudence; it ruins one part of its subjects, and its imaginary wealth becomes the instrument of its destruction. This is what was experienced in France under the system of Law, and again under the reign of the assignâts.

V. *By means of trade.*

Some advantage results from every exchange, provided it be made intentionally and without fraud: otherwise such exchange would not be made; there would be no reason for making it. Under this point of view, the two contracting parties receive an equal benefit: each one of them surrenders what suits him less, that he may acquire what suits him more. In each transaction of this kind there are two masses of new enjoyments.

But though all trade be advantageous, a particular branch may be more advantageous to one of the parties than to the other. It is more advantageous to you than it is to me, if for an article which only costs you one day's labour, you obtain from me an article which has cost me two. The *real balance* of trade is the quantity of labour received, exceeding the quantity of labour given in exchange.

It is not necessary in this place to examine to what degree soil, climate, situation, natural circumstances, &c. may give this advantage to one state over another; since this knowledge can have scarcely any influence upon practice. It is of greater importance to observe, that it may in a certain degree be acquired by art, and that the superiority of workmanship or of instruments is a species of monopoly established by fortune in favour of genius. Time is saved by ingenuity. The greater the number of new inventions in a country whose productions are carried into foreign lands, the more favourable will the real balance of commerce be to that country. The advantages belonging to dexterity are more permanent than those resulting from knowledge. The discoveries of chemistry are speedily disseminated: the skill of the Bengalese workmen will remain peculiar to them for ages.

The great politicians who so much value foreign commerce, consider it as a means of obtaining a balance in gold, and they hasten to interfere to prevent those exchanges which require an expenditure of the precious metals. If a merchant wish to send coin from London to Paris, it is to make a payment which will cost him less in this manner than any other, or that he may obtain some kind of merchandise which he values more than the coin. The politician is more clever than this. He is not willing that this gain should be made, because, he thinks, thus to gain would be to lose. Preventing the profits of every one, is the method he has discovered of preventing loss to all. He has therefore been employed in heaping one law upon another, that he may prevent the exportation of the precious metals: success would be a great misfortune, but it has never been obtained. Want of success in diminishing the evil has only increased the folly: I say in diminishing the evil, for it never entirely disappears. There will, for example, always be a greater or less expense on the part of the government in endeavouring to execute the law; more or less vexation, more or less restraint, a larger or smaller number of individuals punished for having rendered service to the country (by the breach of the law.) People will be accustomed to elude the prohibitions, and to escape the vigilance of government. Money being more or less lowered in value, the price of manufactures will be raised in proportion, and the exportation of manufactures diminished. Such has been the folly exhibited in Spain and Portugal; yet are they too happy only to have half succeeded. Grant to Midas his wish, he will die of hunger upon a heap of gold.

In recommending freedom of trade, I suppose the minds of merchants in their sound, that is, their ordinary state. But there have

* It is not without distrust that I here give this feeble extract, from a manuscript work of Mr. Bentham's, *On Prices*, and upon the causes which *increase Prices*. It embraces so great a number of questions, that it is not possible to give a correct outline of the whole in so short an abridgment.—*Note by Dumont.*

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been times when they have acted as though they were delirious: such were the periods of the Mississippi scheme in France, and the South Sea scheme in England. The other classes of people would have had ground for seeking to divert their fellow-citizens from the purchase of the smoke sold by *Law*, or of the *bubbles* of the South Sea. What is here said, may be compared with the observations in § 8 of the present chapter, upon emigration. In laying down general rules, fortuitous and transient cases ought not to be forgotten.

What has been said respecting the precious metals is true respecting every article of trade and commerce, considered as general wealth. There cannot be any incompatibility between the wealth of each and the wealth of all. But the same rule does not apply to *subsistence* and *defence*. Individuals may find their individual profit, in commercial operations which may be opposed to the subsistence of all, or the defence of all. This particularly may happen to a small community in the neighbourhood of a large one. Establish an unlimited freedom of trade in the small community, the great one may ruin it by means of gold. In case of famine, it might purchase all its provisions; at the approach of war, it might purchase all its arms.

The conduct to be pursued, to insure the possession of the means of subsistence and defence, are infinitely diversified by the situation, the soil, the climate, and the extent of the country to which it may refer.

The great difficulty to be overcome as it respects subsistence, is the difference between good and bad harvests. If the produce be less than the consumption, the evil is evident: if it be greater, the abundance lessens the price, the farmer is ruined or discouraged, and the year of plenty may be followed by one of dearth. For the production of equality, some have established public granaries for storing up the superabundance of years of plenty; others have encouraged cultivation as much as possible, depending upon foreigners for drawing off the excess. Were we to judge from abstract reasoning alone, the first plan would appear best calculated to prevent accidents; but, forming our judgments from facts, the second appears least subject to abuse. It is from the adoption of this plan that England has enjoyed an abundance sufficiently regular. Freedom of trade, therefore, appears the best method for insuring an abundance of the means of subsistence.

In respect to subsistence and defence, there is no better security than that which results from the general prosperity. A superabundance is the best security against want.*

After the examination we have given to the different methods by which real wealth may be increased, we see that government may rely upon the *intelligence* and *inclination* of individuals for putting them in operation, and that nothing is necessary to be done on its part but to leave them in possession of *the power*, to insure to them *the right* of enjoyment, and to hasten the development of general knowledge. All that it can do with success may be ranged under this small number of heads: —

1. To encourage the study of different branches of natural philosophy. The difficulties of science form a barrier between practice and theory, between the artisan and the philosopher.

2. To institute prizes for discoveries and experiments.

3. To cause the processes employed in every branch of trade to be published. The French government, rising above little jealousies, has distinguished itself in this manner, and has rendered itself a benefactor to the human race.

4. To cause everything of the same nature in foreign countries to be observed with attention, and to give the knowledge they obtain the same publicity.

5. To cause the price of different articles of trade to be published. The price of an article is an extra reward for whoever can manufacture or furnish it at a cheaper rate.

6. To grant patents for a limited number of years.

With respect to a great number of inventions in the arts, an exclusive privilege is absolutely necessary, in order that what is sown may be reaped. In new inventions, protection against imitators is not less necessary than in established manufactures protection against thieves. He who has no hope that he shall reap, will not take the trouble to sow. But that which one man has invented, all the world can imitate. Without the assistance of the laws, the inventor would almost always be driven out of the market by his rival, who finding himself, without any expense, in possession of a discovery which has cost the inventor much time and expense, would be able to deprive him of all his *deserved* advantages, by selling at a lower price. An exclusive privilege is of all rewards the best proportioned, the most natural, and the least burthensome. It produces an infinite effect, and it costs nothing. "Grant me fifteen years," says the inventor, "that I may reap the fruit of my labours; after this term, it shall be enjoyed by all the world." Does the sovereign say, "No, you shall not have it," what will happen? It will be enjoyed by no one, neither for fifteen years nor afterwards: everybody will be disappointed — inventors, workmen consumers — everything will be stifled, both benefit and enjoyment.

Exclusive patents in favour of inventions

* See Vol. I. *Principles of the Civil Code*, Chapters IV. and V. *Laws relative to subsistence and abundance.*

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have been long established in England. An abuse, however, has crept into the system of granting them, which tends to destroy the advantage derivable from them. This privilege, which ought to be gratuitous, has afforded an opportunity for plundering inventors, which the duration of the custom has converted into a right. It is a real conspiracy against the increase of national wealth.

We may picture to ourselves a poor and timid inventor, after years consumed in labour and uncertainty, presenting himself at the Patent Office to receive the privilege which he has heard that the law bestows upon him. Immediately the great officers of the crown pounce upon him together, as vultures upon their prey: — a solicitor-general, who levies four guineas upon him; a keeper of the privy seal, four guineas and a half; a keeper of another seal, four guineas; a secretary of state, sixteen guineas; the lord chancellor, who closes the procession, as the first in dignity, so also the first in rapacity, — he cannot take less than twenty-six guineas.* Need it be added, that in carrying on this process of extortion, recourse is had to fraud — that the individual applying for a patent is referred from office to office, that different pretexts may be afforded for pillage — that not one of these officers, great or small, takes the trouble to read a single word of the farago of nonsense which they sign, and therefore that the whole parade of consultation is only a farce.†

Suppose a law, granting the patent as at present, without condition;—suppose another law, prohibiting the obtaining of a patent under a penalty of fifty guineas: what exclamations should we not hear against such contradictory laws and such folly! And yet this supposed folly is only half as great as the folly actually displayed. People always allow themselves to be duped by words. The law, or rather the customary abuse which has the force of law, instead of a permission, is, as it respects the greater number of inventors, a real, although masked prohibition. If you wish to strip off this mask, translate the language of each into the language of the other.

These insults and oppressions have sometimes been approved as tending to repress the *temerity* of projectors; in the same manner, taxes upon law proceedings have been applauded as tending to repress the *temerity* of suitors: as if *poverty* were synonymous with *temerity* — as if the rich only had need of the assistance of the laws, or that they only were worthy of it — as if, indeed, this reason for only half opening the doors of the temple of justice were not equally conclusive for closing them altogether!

7. To class with the crime of forgery the injustice done by the artisan who puts upon his own productions the mark of another. — In order to prevent the commission of this crime through ignorance, it would be necessary to establish a register, in which every artisan might make an entry of his mark. This would tend to secure the privilege which nature has established in favour of skill, and which the legislator ought to maintain. It can never be obtained without labour, and it can never be abused.

CHAPTER IV.

OF POPULATION.

§ 1. *Sponte Acta.*

WITH regard to increase of population by births,‡ everything may be left to the spontaneous action of individuals.

§ 2. *Agenda.*

With regard to increase of population, next to nothing is required to be done by government: all that governments need do is to prevent decrease by deperition.

To prevent deperition is to afford security — security against the extremity of all mischief, the destruction of man's life. The sources of danger are — external hostility, internal hostility, and calamity. With regard to the two first, the interference of government is required for the purposes of defence and police. The following are examples of institutions for preventing deperition from calamity: —

1. Hospitals for the use of curable sick and hurt among the poor.

2. Hospitals for the incurable sick and helpless.

3. Establishments for the occasional maintenance and employment of the able-bodied among the poor, viz. of such by whom either the one or the other is unobtainable from the

* If a patent be taken out for each of the three Kingdoms, the expense is estimated at £120 for England, £100 for Scotland, and £125 for Ireland. *Vide* Commons' Report on Patents.—*Ed.*

† It is scarcely necessary to remark, that in blaming the abuse, no reproach is intended to be cast upon the individuals, who, finding it established, profit by it. These fees form as lawful a portion of their emoluments as any other. It is, however, to be desired, that in order to put a stop to this insult and oppression, an indemnification were granted at the public expense, equal to the average value of these fees. If it be proper to levy a tax upon patents, it ought, instead of being levied in advance upon capital, to be postponed till the patent has produced some benefit.

‡ Increase of population is desirable, as being an increase of — 1. The beings susceptible of *enjoyment;* 2. The beings capable of being employed as *instruments of defence.* It results of course from the increase of the means of subsistence, and *cannot be carried beyond them.*

Of population, nothing is said by Adam Smith: yet of what use is wealth, but with reference to population? — and how can either be considered in any comprehensive point of view without the other? since, *quantity* of wealth being given, degree of opulence is inversely as population.

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ordinary sources. By their maintenance, population is preserved; by their employment, wealth may be increased or not: crimes of idleness are prevented.

4. Establishments for the prevention or mitigation of contagious diseases — establishments in former times for inoculation, now for vaccination. Much *may* be done on the part of government under this head, as well as so many others, by *instruction:* more or less requires to be done, in proportion as by the ignorance of the people, operations of this class are excluded from the class of *sponte acta*, and thence placed among the *agenda*.

§ 3. *Non-agenda.*

Institutions on the part of government, having for their end in view the causation of an increase of population by births, may best be characterized by a parallel example: institutions punishing men for not eating, or for eating food not sufficiently nourishing; institutions paying all mankind for eating, with premiums for those who eat most and oftenest.

Many volumes have been written upon the subject of population, because the means of promoting its increase have generally been the subject of examination. I shall be very short upon this subject, because I shall confine myself to showing that all these means are useless.

If anything could prevent men from marrying, it would be the trouble which is pretended to be taken to induce them to marry. So much uneasiness upon the part of the legislator can only inspire doubts respecting the happiness of this state. Pleasures are made objects of dread when converted into obligations.

Would you encourage population, — render men happy, and trust to nature. But that you may render men happy, do not govern them too much; do not constrain them even in their domestic arrangements, and above all, in that which can please only under the auspices of liberty: in a word, leave them to live as they like, under the single condition of not injuring one another.

Population is in proportion to the means of subsistence and wants. Montesquieu, Condillac, Sir James Stewart, Adam Smith, the economists, have only one opinion upon this subject.* According to this principle, there is also a means of increasing population, but there is only one: it consists in increasing the national wealth, or, to speak more correctly, in allowing it to increase.

Young women, says Montesquieu, *are sufficiently ready to marry*. How should they not be? The pleasures, the avowed sentiments of love, are only permitted in this condition: it is thus only that they are emancipated from a double subjection, and that they are placed at the head of a little empire. *It is the young men*, he adds, *who need to be encouraged.*

But why? Do the motives which lead men to marry want force? It is only by marriage that a man can obtain the favours of the woman who, in his eyes, is worth all others. It is only by marriage that he can live freely and publicly with an honest and respectable woman, and who will live only for him. There is nothing more delightful than the hope of a family, where proofs of the tenderest affections may be given and received — where power blended with kindness may be exercised — where confidence and security are found — where the consolations of old age may be treasured up — where we may behold ourselves replaced by other selves — where we may say, I shall not entirely die. A man wants an associate, a confidant, a counsellor, a steward, a mistress, a nurse, a companion for all seasons: all these may be found united in a wife. What substitute can be provided?

It is not among the poor that there is any aversion to marriage; that is to say, it is not among the labourers — that class, in the increase of which alone the public is interested — that class which constitutes the strength and creates the wealth of a nation — that class which is the last in the senseless vocabulary of pride, but which the enlightened politician regards as the first.

It is in the country especially that men seek to marry. A bachelor does not there possess the resources he can find in a town. A husbandman, a farmer, require the assistance of a wife, to attend to their concerns at all the hours of the day.

The population of the productive classes is limited only by their real wants; that of the unproductive classes is limited by their conventional wants.

With regard to these, instead of inducing them to marry by invitations, rewards, and menaces, as did Augustus, we ought to be

* The name of Mr. Malthus, who will for the future occupy the post of honour in political economy upon the subject of population, is not mentioned here, because this work was many years anterior to his. This chapter, with many other fragments, was communicated to the authors of the *Bibliotheque Britannique*, published at Geneva, and was inserted in the 7th volume in 1798. If Mr. Malthus had known it, he might have cited it as an additional proof that his principle relating to population was not a new paradox. But what was new, was to make a rational and connected application of it; to deduce from it the solution of so many historical problems; to survey Europe with this principle in his hand; and to prove that it cannot be resisted without producing great confusion in social order: and this is what Mr. Malthus has accomplished, in a manner as conclusive as respects his arguments, as interesting in respect of his style and his details.—*Note by Dumont.*

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well pleased when they live in celibacy. The increase of the purely consumptive classes is neither an advantage to the state nor to themselves: their welfare is exactly in the inverse ratio of their numbers. If they should insensibly become extinct, as in Holland, where there is scarcely one citizen who does not exercise some occupation, where would be the evil? A workman may in a moment be converted into an idle consumer. A good workman is not so soon made: he needs skill and practice. Habits of industry are slowly acquired, if, indeed, after a certain age they can ever be acquired. On the other hand, when a consumer passes into the class of labourers, it is generally owing to a reverse in fortune, and he is in a state of suffering. When a labourer is transported into the class of consumers, he is exalted in his own eyes and in the eyes of others, and his happiness is increased. On all these accounts, it is desirable that the class of idlers be not increased: their own interest requires it, and it is also a great good when their number is diminished, whether by celibacy or their conversion into labourers.* Convents have been constantly accused of hurting population. Poor convents, and the mendicant orders, injure it, without doubt, since they add to the number of idle consumers. It is not so with rich convents; they add nothing to this number. He who possesses the rent of land can command labour without working himself; but what matters it whether a fund, destined to the support of idlers, be transmitted from father to son, or from stranger to stranger?

Large cities are decried: they are the gulphs, it is said, in which the population of the country is lost. That which is furnished to the towns is visible to all the world: what is received from them, is less apparent. It is the ancient quarrel of the belly and the members. Cultivation increases in proportion to the consumers. People live longer in the country; but that a greater number of persons may be born there, it is necessary that the capital of the towns, which animates labour, should be sent thither.

This imaginary evil, the increase of towns, has excited the most extravagant fears. Absurdity has been carried so far, as to make rules for limiting their bounds: they should rather have been made for extending them. Contagious disorders would thus have been prevented; the air would have been rendered more salubrious. The opposite regulations do not diminish the number of inhabitants, but oblige them to heap themselves up within close habitations, and to build one city upon another.

Are emigrations disadvantageous to a state? Yes, if the emigrants could have found employment at home; — no, if they could not. But it is not natural that labourers should exile themselves, if they could live at home. However, if they desire so to do, ought they to be prevented? Cases must be distinguished. It is possible that this desire may have been produced by some momentary distaste, by some false idea, some whim, which may mislead a multitude of men before they have leisure to undeceive themselves. I will not therefore affirm, that circumstances may not happen in which emigration may not be forbidden by a law of short duration: but to convert this prohibition into a perpetual law, is to change the country into a prison — is to publish, in the name even of the government itself, that it is not good to live there. It

* The author is consistent, and Montesquieu appears to me not to be so. Book xxxiii. ch. x. he has well explained the true principle, but he has not followed it.

His elogium upon the regulations of Augustus respecting marriage, is extremely singular. They have pleased Montesquieu by some vague idea of the protection of *morals*. They violate every principle of reward and punishment; they are neither analogous nor proportional; they punish a man because he is unhappy or prudent — they reward him because he is happy or imprudent: they corrupt marriage by mercenary and political views; and, after all, the object aimed at is missed. Montesquieu acknowledges the impotence of these laws. The benefit of the remedy being null, there remains only the evil.

He blames Louis XIV. (ch. xxvii.) for not having sufficiently encouraged marriage, by only rewarding prodigies of fecundity.

Louis XIV. did too much by his establishments for the poor nobility, and he has been too frequently imitated. Humanity was the motive of these foundations; but this humanity was equally productive of evil as it respected those who bore the expense, and as it respected the class whom it was intended to relieve, and who were not relieved. On the contrary, the more the indigent of this order were assisted, the more they increased. In fact, every individual requires a certain quantity of wealth to be in a state to marry. Does he marry imprudently, his distress is without doubt an evil; but it operates as a warning to other persons of the same class. If you oppose this natural effect, if you institute foundations for families, if you grant pensions or other favours on account of marriage, what follows? It is no longer an establishment submitted to calculation — it is a lottery, in which hope is consulted rather than prudence; many venture, but few succeed. You intended to give support, and you have laid a snare. What you did in order to diminish the evil, has only served to make it worse. In pity to these unfortunate persons, they ought not to be encouraged to marry. When they no longer are deceived by hope, they will no longer be unhappy.

In England there is neither restriction nor encouragement, and there is no dread lest the stock of nobility should fail — there is no dread lest celibacy should be hurtful to population. The shameful and sad misfortune is not known there, of the existence of a class of persons set apart to idleness and poverty.—*Note by Dumont.*

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would be proper that such a law should commence thus — "We, &c., ignorant of the art of rendering our subjects happy, and well assured that, if we give them an opportunity to escape, they will go in search of countries less oppressed, hereby prohibit," &c.

Would not this be to aggravate the evil? Could all the frontiers of a great country be guarded? Louis XIV. with all his authority, could he accomplish it? As many persons as were thus enchained, so many discontented and unhappy persons, who would be looked upon with distrust — whom it would be necessary perhaps to repress by violence, and who would become enemies when they found themselves treated as such. Others, who had never thought of quitting their country, would become uneasy when they found themselves obliged to remain; whilst others, who might have thought of establishing themselves there, would take care not to do it. For those individuals retained against their will, you lose those who would have come among you voluntarily.

England has sustained temporary losses of men and capital, by emigrations to America. But what has happened? She has received from that country, a mass of productions which have more than compensated the loss. The men and capitals carried away, employed upon new lands, have produced a benefit more considerable for England itself, than if they had been employed upon her own. To exhibit this clearly, would require a multitude of facts and calculations; but it may be presumed to be the case, from the vast extent of this new commerce.

On the subject of emigration, the wisest part, then, is to do nothing. Under the guidance of liberty, the benefit is certain; under the guidance of constraint, it is uncertain.

After this, the advantages of immigration are easily estimated. In order to people a country as yet untilled, it will be advisable to invite thither strangers who depend upon their labour alone. It may even be advantageous to make them advances for their support, in order to establish them.

In respect to methods of preventing the destruction of the species, they belong to that branch of police which is employed about the means of subsistence and the public health. We may be tranquil, therefore, upon the subject of population. There will be everywhere an abundance of men, provided they are not deprived, by a hard and tyrannical government, of what is necessary for subsistence and enjoyment, of which contentment constitutes a part.*

* I have under my eyes a large political work of M. Beausobre, counsellor to the King of Prussia, in which, at the article *Population*, he gives no less than twenty recipes for increasing it. — The nineteenth is as follows: — "It is proper to watch during the fruit season, lest the people eat that which is not ripe." He ought to have provided the means for carrying this regulation into execution; to have indicated the number of inspectors who should judge of the ripeness of fruit, the watchmen who should be stationed over it, and the magistrates who were to judge of its infractions.

Another method consists in "hindering men from marrying very disagreeable women." He neither says to what judge he would remit this delicate inquiry, nor upon what principles he would have the ugliness of women proved; nor the degree of inquiry which ought to be permitted, nor the fees that ought to be paid. The remainder is very nearly in the same taste.

Hindering the marriage of old men with young women — that of young men with women much older than themselves — hindering the marriage of persons not likely to have children: there are other recipes of this political pharmacopœia little less ridiculous, but not less useless.

His complaints respecting prostitution are reasonable, if they had for their object the misery of the class of courtesans, victims of a constrained celibacy: they are of no force as respects population, which suffers nothing. I refer to what has been said upon this subject in Vol. I. *Principles of Penal Law*, Part III. Ch. V. p. 541, Prob. 2, to make such arrangements that a given desire may be satisfied without prejudice, or with the least possible prejudice.

CHAPTER V.

OF FINANCE.

§ 1. *General Observations.*

UNDER the head of *sponte acta*, there is nothing except by accident: there remain, therefore, *agenda* and *non-agenda*. Finance operates *in toto* in diminution of wealth: the object or end in view, should be to render the diminution as small as possible, and as pure as possible from collateral vexation and inconvenience in every shape.

The operations of finance are reducible to receipt and disbursement, or say expenditure.

Receipt may be — 1. Without condition of return; 2. On condition of return; *i. e.* on the footing of a loan.

Disbursement is accordingly — 1. Disbursement at large; 2. Disbursement in discharge of loans. Expenditure supposes; in all cases, previous receipt; and in cases of loans, necessitates future receipt for the purpose of replacing the money borrowed.

Receipt and expenditure are either — 1. Of money; 2. Of particular articles for service.

Every sum expended supposes therefore a correspondent amount already raised, or to be raised, by taxes.

The practical rule which ought to be observed in judging of the expediency of any branch of expenditure is, — compare the benefit of it with the burthen of a correspondent portion of the produce of the most burthensome tax. By striking off so much expenditure, you may save so much tax.

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Taxes take from present enjoyment: they diminish comfort in proportion as they are paid by each contributor out of that portion of his wealth, which, had it not been for the tax, would all of it have been spent within the year in the way of maintenance, as money is spent by a man who is said to spend his income.

Taxes diminish future wealth in proportion as they take from capital; viz. by being taken from that portion of a man's money, the whole of which, had it not been for the tax, would have been spent on articles by the production of which real capital is increased; or even by being taken from that portion of his money which is expended in the way of maintenance, in so far as the money, had it not been taken from him by the taxes, would have been employed in the shape of pecuniary capital, by which real capital is increased.

Taxes, therefore, take from growing wealth — 1. In as far as they are levied on capital; viz. on money destined for employment in the shape of capital, or on goods or labour, of which real capital is composed;—2. In as far as they are levied on income, or expenditure in the way of income, of men who lay up money to be employed as capital, or would have laid it up, had it not been for the tax.

Borrowing money to defray war expenses, takes from pecuniary capital, thence from growing wealth, in the amount of the sum so raised—minus the amount of mercantile profit upon such part of the expense as consists of purchased articles.

Repaying money formerly borrowed for war or other expenses, adds to pecuniary capital —thence to real capital — thence to growing wealth, to the amount of the money so employed in such repayment or discharge; deducting such part, if any, as is exported without return to foreign countries; which is the case with such part as is exported by the proprietor, to be employed abroad by him or on his account without being reimported, — that or the profit made by it.

By the mere discharge of a million worth of debt, as much, or more, is therefore done towards the increase of wealth, as by a million given in the way of bounties for the encouragement of this or that particular branch of trade.

Those who in the one case receive the amount of the debts respectively due to them, give up the future interest, and the rest of the community is exonerated from the payment of it: those who in the other case receive the million on the score of *bounty*, give up nothing in return for it.

When money is to be borrowed, borrowing it, in part at least of foreigners, is attended with two advantages. At the time of *borrowing*, it diminishes the consumption of home capital, the consequent check to production, and the loss to private borrowers as well as to government by the sudden *rise* in the rate of interest. At the time of paying off, it diminishes the loss produced to moneyed men at home, by the sudden pouring in of capital into the market (money which must be laid out in the shape of capital,) and by the sudden *fall* in the rate of interest which is the consequence. By *moneyed men*, understand here — not the opulent only, but *all*, to the very poorest, whose incomes arise out of the interest of money, and that interest reducible.

Some men grieve on this occasion, at the thoughts of the money that goes out of the nation to pay foreigners. A housekeeper might as well grieve at the thoughts of the money that goes out of the house to pay the baker. If to-day the money goes out of the house, it is because the other day the bread came into it. Do without bread, or bilk the baker, the money will be saved.

Taxes are either on property, or on presumption of property. In both cases, they are either on income or on capital.

Taxes on property in the shape of income, are either direct, or on consumption,—called of late years, from the French, indirect taxes.

Taxes on capital diminish present capital, and thence future and growing wealth, by the whole of their amount: taxes on income by the amount of the savings that would have been made out of income, and added to capital, instead of being spent in maintenance, had it not been for the tax.

The fault of direct taxes on presumption of property is inequality — that of direct taxes on property is vexation. Indirect taxes have no fault beyond the mere privation, which must be undergone at any rate: the vexation which in the case of direct taxes on property extends to everybody, is confined in the case of indirect taxes to the fabricators and venders of the article taxed, who make themselves amends for it in the price.

§ 2. *Of direct and indirect Taxation.*

When a tax is imposed upon any commodity, a proportionable discouragement — intended or not intended — is applied to the corresponding branch of profit-seeking-industry, and thence a proportionable encouragement to the most immediately rival branches. In this way the branch of political economy which belongs to finance is unavoidably, though often perhaps undesignedly, entangled in practice and effect with the other branches.

To an *indirect* tax, each man pays no more than he pleases;* and the *vexation* attendant

* When indirect taxes are levied upon articles of luxury, a man need pay no more than he pleases; but the case appears to be otherwise as respects the poor, when they are levied upon articles of necessity.—*Ed.*

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on the collection of it is confined to the makers and venders of the commodity taxed.

To a *direct* tax, each man pays what the imposer of the tax pleases; and the vexation attendant upon its collection embraces every man who pays it.

Indirect taxation, as far as it will go, is therefore preferable to direct; but the length to which it can be made to go depends, in the instance of each nation, upon its degree of relative opulence.

Of France, England, and Holland, in the scale of absolute wealth, France is at the top, Holland at the bottom. In the scale of relative opulence, France is at the bottom, Holland at the top.*

Comparatively speaking, England, till of late, made little use of direct taxes: France, little use of any other. Her abstinence from indirect taxes has been chiefly the result of necessity,† though in some degree of choice.

A tax on *imports* is borne by our own people — a tax upon exports to foreign countries, is borne by the inhabitants of foreign countries. Whatever imposition of this kind foreigners can be made to bear, is so much gain to *us*. If, indeed, when a fresh tax is imposed upon an article of export, the quantity of it produced is considerably diminished by the tax, a temporary distress is thereby produced; and the suffering may be less or greater than the suffering saved by the saving in the amount of taxes borne by ourselves. But if the quantity produced be *merely prevented from increasing*, no such suffering is produced, and the benefit by the saving in home-paid taxes is pure. The addition which, had it not been for the tax, would have been made to the quantity of the commodity thus taxed, spreads itself among other commodities of all sorts.

The *direct* effect of the sort of tax called *indirect*, is to make a man pay for the use of the article taxed, and go on using it as before: — an *indirect* effect is — to make him cease to use it, to avoid the paying of the tax. This indirect effect is the same as that of a *prohibitive* law, — prohibiting the use of the article, — viz. under a penalty equal to the amount of the tax. So far as the one effect takes place, the other does not. Commonly they take place together, in proportions infinitely diversifiable.

In the way of prohibition, a tax seldom falls on the article taxed, so exclusively as might be supposed. The prohibition falls — not merely upon the article taxed, but upon whatever article each man can best spare. When a fresh tax is imposed upon wine, a man who, having been used to buy wine and books, is fonder of wine than of books, reduces the quantity, not so much of his wine, as of his books. By a tax upon gin, many a man, instead of being sobered, has been starved.

The *best* sort of indirect tax is that which, by its effect in the character of a prohibition, diminishes the consumption of an article the use of which is pregnant with future misery, — the dregs of the cup of present pleasure. Such, above all, are the *pabula* of drunkenness. The fiscal, is in this case crowned by a moral use.

The *worst* sort of indirect tax is that which, in the character of a prohibition, lessens the use of an article to which a man's attachment is apt not to be so great as it were to be wished it were, considering what is the produce of it in the shape of permanent good, over and above the evanescent pleasure. The fiscal use is in this case clogged with an anti-moral tendency. Books, especially of the instructive kind, music, instruments of pastime of all sorts, not to speak of public entertainments — everything — morality is served by everything of this nature that calls a man off from drunkenness.

The mischief done in the way of prohibition by that species of *direct* tax which is imposed upon produce, is frequently but too real, but is apt to be exaggerated. Though my profit would be greater if I had nobody to share it with me, my having somebody to share it with me, does not make me deny myself all profit. Few men are so spiteful as to hate others more than they love themselves: — especially, the government, which is nobody, quarrels with nobody, and protects everybody. A man without a partner has the whole profit to himself; — yet many men submit to saddle themselves with partners. The government which imposes proportional taxes on produce, is a partner who furnishes protection, though nothing else.

I have elsewhere spoken of the *best* of all financial *resources*, and the *worst*.‡ The best

* I speak of the recently *past*: one knows not well what to say of the present.

† Indirect taxes, being collected from venders, presuppose exchange: direct taxes may alike be levied, exchange or no exchange — they may be levied on producers, venders or non-venders. The further a nation is advanced in the career of opulence, the fewer the articles produced by non-venders. A main cause, as well as effect, of opulence, as per Adam Smith, is division of labour: — as this advances, fewer and fewer sorts of things are done by the same hand; till at last, some one sort of thing excepted, there is nothing that a man does not find it cheaper to buy than to make at home. This applies more particularly to manufactures: in agriculture, the division is stopped by a variety of causes, which for the most part, though not *in toto*, are insuperable.

France used to swarm, and swarms as much as ever, with petty occupiers of land—proprietors or not proprietors; who producing each of them the greater part of what he consumes, have the less need, and the less ability, to purchase; and who, accordingly, if they were not forced to pay direct taxes, would scarcely pay anything.

‡ See *Escheat* vice *Taxation*, Vol. II. p. 585; and *Protest against Law-Taxes*, Vol. II. p. 573.

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(supposing public opinion to admit of it,) as well as the most copious, seems to be that which gives to the public a share in property become vacant by death, on failure of near relations. The formation of counter-expectations being prevented by pre-established law, receipts from this source need not be attended with that vexatious sense of *privation* which is the inseparable accompaniment of a tax.

The *worst* is that tax called direct or indirect, which, as often as it acts as a *prohibition*, deprives a man of *everything*, by depriving him of *justice* — the tax, I mean, upon *law proceedings*, by which the poor, that is, the bulk of the community — especially the oppressed and afflicted part of it — are put out of the protection of the law.

Abstractedly considered, the tax upon *medicine* might be stated as still worse: — the prohibition in this case bearing more immediately and exclusively, as well as extensively, upon health and life. But the tax is not apt to be so heavy upon medicine as upon *justice*. There are, moreover, hospitals and dispensaries for the relief of the poor who want medicine; but there are none for the relief of poor and helpless suitors who want justice.

Indirect and direct taxation are limited by the patience of the people. The *ne plus ultra* is variable and unascertainable, depending upon events and the temper of the times. Not knowing how soon it may arrive, governments are anxious to pay off debt — because, in proportion as debt is paid off, taxes, by which the interest is paid, may be taken off; and being taken off, may in case of need be laid on again. A tried tax will always be a more secure dependence than an untried one.

In the case of indirect taxes, a common notion considers the *ratio* of the tax to the price of the article as limited to a *maximum;* — limited, viz. by the effect of smuggling. If the ratio be increased, it is supposed that more will be lost by the quantity that escapes the tax, than will be gained by the addition to the amount of the tax on the quantity that pays it. This notion, supposing it just, as applied to the aggregate of taxable articles, will be apt to be illusive, as applied to this or that sort of article, considered by itself. In respect of difficulty of evasion and facility of collection, the scale of variation is stretched to a great latitude by the bulkiness of the article, by the local circumstances of the place at which the tax is collected, and by a variety of circumstances. But other causes of variation, and these very powerful ones, are,—the organization of that part of the financial system which concerns the mode of collection; — and thence the vigilance or remissness — the sufficiency or insufficiency in number, and the probity or improbity of the functionaries employed; — the good or bad contrivance of the taxation laws, in respect of the obligations imposed on the contributors for the prevention of evasion; the amplitude or scantiness, the good or bad choice made, — of the powers given to the collectors for the prevention of evasion; — and the apposite or inapposite construction of the system of judicial *procedure* on this subject, including the rules of *evidence*.

The limits thus set to *indirect* taxation, are set — not by the nature of things, but by the imperfection of the laws. It is to this imperfection that men are indebted for the inequality and vexation attendant on direct taxes, in comparison with indirect ones.

§ 3. *Taxes — Effects on Production.*

Taxes ought to have no other end than the production of revenue, with as light a burthen as possible.* When it is attempted to employ them as indirect means of encouragement or discouragement for any particular species of industry, government, as we have already seen, only succeeds in deranging the natural course of trade, and in giving it a less advantageous direction.

The effects of particular taxes may appear very complicated and difficult to trace. By considering the subject in a general point of view, and distinguishing the *permanent* from the *temporary* effects of taxes, this complexity will be disentangled, and the difficulty disappear.

First question: *What are the effects of a tax imposed by a foreign nation upon the articles of our manufacture?*

Permanent consequences: — 1. If the exportation be not diminished, the tax makes no difference with respect to us: it is only paid by the consumers in the state which imposes the tax.

2. If the exportation be diminished, the capital which was employed in this branch of manufacture withdraws itself and passes into others.

Temporary consequences: — This diminution of exportation occasions a proportional distress among the individuals interested in this species of industry. The workmen lose their occupations; they are obliged to undertake labours to which they are unaccustomed, and which yield them less. As to the master manufacturer, a part of his fixed capital is rendered useless; he loses his profits in proportion as the manufacture is reduced.

Second question: *What are the effects of a tax imposed by ourselves, upon the manufactures we ourselves consume?*

Permanent consequences: — 1. If the con-

* This principle may admit some exceptions, but they are very rare: for example, a tax may be imposed upon intoxicating liquors, with the design of diminishing their consumption by increasing their price.

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sumption be not diminished, no other difference is produced than the disadvantage of the tax to the consumer, and a proportional advantage for the public.

2. If the consumption be diminished, individuals are deprived of that portion of happiness which consisted in the use of this particular article of enjoyment.

3. Capital, in this as in the preceding case, retires from this branch, and passes into others.

Temporary consequences: — If the consumption be not diminished, the tax makes no difference: if it be diminished, similar distress, in proportion, as in the case above.

Third question: *What are the consequences of a tax imposed by ourselves, upon the manufactures of our own country consumed by foreigners?*

Permanent consequences: — 1. Whilst the consumption is not diminished, the operation produces so much clear gain for us. The burthen of the tax is borne by the foreigner, and the profit is reaped by ourselves.

If the consumption be diminished, the capital which loses this employment passes into others.

Temporary consequences: — Consumption not diminished, no difference to us: consumption diminished, similar distress in proportion, as in the former cases.

It results from hence, that the *permanent* effects of these taxes are always of little importance as to commerce in general; and that their temporary effects are evil in proportion to the diminution of the consumption. The evil is greater or less, according as it is more or less easy to transfer capital and labour from one branch of industry to another.

The least hurtful of these taxes are those which bear upon our own productions consumed by foreigners. If the same quantity be exported after the tax as before, so far from being prejudicial, it yields us a clear benefit: it is a tribute levied upon them precisely as if it were raised out of the bowels of the earth.

The tax imposed by us upon foreign importations is paid by ourselves, and burthensome as any other tax would be to the same amount. If the consumption be not diminished, it would be better that the tax upon this article should be imposed by us, that we might profit by it, rather than by the country which produced it, and which would then enjoy the benefit.

A nation which has a natural monopoly of an article necessary to foreigners, has a natural means of taxing them for its own profit. Let us take *tin* for an example: England is the only country which has mines of this metal — at least, all others are too inconsiderable to satisfy the demand. England might therefore lay a considerable tax upon the exportation of tin, without danger of smuggling, because it might be levied at the mine, or at the foundry. France could not impose an equal tax, because it would give too great an allurement to the smugglers.

These principles are easy of application to commercial treaties. Everything which is permanent, whether it be called encouragement or discouragement, has but little effect upon trade and commerce in general; since trade and commerce are always governed by the capital which can be employed on them. But international precautions may be taken for the prevention of rapid changes, from which temporary distresses result. Let every nation make a sacrifice by refusing to impose taxes, or to augment them, upon articles of its own exportation: every nation would then receive indemnification by a reciprocal sacrifice. Commerce would thus acquire stability; and that petty fiscal warfare would no longer be carried on, which produces a dangerous irritation among the people, always greatly disproportioned to the importance of the object.

The object of the first chapter of the commercial code ought to be to show the reciprocity of international interests, to prove that there is no impropriety, during the continuance of peace, in favouring the opulence of foreigners — no merit in opposing it.

It may happen to be a misfortune that our neighbour is rich: it is certainly one that he be poor. If he be rich, we may have reason to fear him; if he be poor, he has little or nothing to sell to, or to buy of, us.

But that he should become an object of dread by reason of an increase in riches, it is necessary that this prosperity should be his alone. He will have no advantage, if our wealth has made the same progress as his own, or if this progress has taken place in other nations equally well disposed with ourselves to repress him.

Jealousies against rich nations are only founded upon mistakes and misunderstandings: it is with these nations that the most profitable commerce is carried on; it is from these that the returns are the most abundant, the most rapid, and the most certain.

Great capitals produce the greatest division of labour, the most perfect machines, the most active competition among the merchants, the most extended credits, and consequently the lowest prices. Each nation, in receiving from the richest everything which it furnishes, at the lowest rate and of the best quality, would be able to devote its capital exclusively to the most advantageous branches of industry.

Wherefore do governments give so marked a preference to export trade?

1. It is this branch which exhibits itself with the greatest show and eclat: it is this which is most under the eyes of the gover-

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nors, and which therefore most strongly excites their attention.

2. This commerce more particularly appears to them as their work: they imagine they are creators; and inaction appears to them a species of impotence.

All these pretensions fall before the principle, that *production is subordinate to capital.* These new branches of trade, these remote establishments, these costly encouragements, produce no new creations; it is only a new employment of a part of one and the same capital which was not idle before. It is a new service, which is performed at the expense of the old. The sap which by this operation is strained through a new branch being diverted from another, gives a different product, but not an increase of produce.

CHAPTER VI.

OPERATION OF A SINKING FUND ON THE PRODUCTION OF WEALTH.

THE establishment of an effective and undivertible sinking fund, has been productive of effects in respect of increase of wealth, such as (to judge from any indications I have met with) had not presented themselves to those by whom the plan was adopted, or by any of those by whom it had been proposed.

Money borrowed for and applied to war expenses, is so much taken from productive capital and growing wealth. Money employed in discharge of such debt (whether by paying it off at *par*, or by buying it in, at an under price,) is so much given to productive capital and growing wealth.

If in a season of reimbursement, viz. peace, the space of time employed in the discharge of the debt were no longer than the space of time employed in the contracting of it, and the money employed in the reimbursement were no greater than the money borrowed, the quantity added to wealth would be equal to the quantity taken from it, bating only the loss of the interest at compound interest upon the several years' instalments during the expenditure of it: as, if ten millions were borrowed every year for four years of war, and ten millions were paid off every year for the four succeeding years, being years of peace, there would be forty millions taken from wealth, forty millions added to wealth: but to put the nation into the same plight in respect of wealth, as if there had been no money raised for the war, it would require the interest of the first years' ten millions for the four years, plus that of the second for the three years, plus that of the third for the two years, plus that of the fourth for one year, supposing the whole debt to be paid off at once on the first day of the year of peace; and as by the supposition it would be paid off not so, but by instalments as above, this would require a further addition on the score of the correspondent retardations.

On this supposition, it is evident that a nation could never be put by reimbursement in a plight exactly as good as what it would have been in had there been no borrowing for unproductive purposes.

But, in point of fact, a circumstance attending the borrowing system is, that the money paid and given to productive capital at the period of reimbursement, is upon the whole considerably greater than the money borrowed and spent, and taken from productive capital at the period of expenditure. When money is borrowed in three per cents. at six per cent., that is, when for every £100 borrowed of the individual, government gives him a nominal capital of £200 stock, each £100 carrying an annuity of three per cent., to discharge this annuity of £6 in the way of paying off (buying in under par being supposed out of the question,) £200 must at the time of reimbursement be put into his hands.

In the course of the late wars, greater interest than this has actually been given by the British government. If, then, the circumstance of time were laid out of the account, the consequence would be, that in so far as mere wealth were concerned, a nation with a fixed sinking fund might be — and, in a word, that Britain would be, a gainer by a war to a very considerable degree. If, for example, in the first year of a war, ten millions were borrowed on these terms, and on the first day of the second year, being a year of peace, the money borrowed were repaid at par, for which, on the above terms, twenty millions would be necessary, the gain to wealth would be ten millions, minus a year's interest upon ten millions.

The above supposition is given only for illustration; for, as everybody knows, neither is money on the first year of a war borrowed on terms of such disadvantage, nor is it so soon repaid.

It may, however, serve to show thus much, viz. that the more disadvantageous the terms are on which money is borrowed, the greater is the restitution made to wealth.

This would not, in my view of the matter, be any recommendation of war, or borrowing for that or other purposes upon disadvantageous terms; because comfort, including security, is the immediate and only direct object in any estimate with me — and wealth only in so far as it contributes to comfort, which, without due provision made for security, it cannot do.

But in a view of the matter, which to me appears much more common than my own, this consideration should be a very important one, and should go a great way towards reconciling men to war and bad bargains.

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The answer to it is, that if it be wealth — future wealth, you want, and you are willing to pay the price for it in present comfort, you have no reason to seek for it through any such disadvantageous measure as that of war: raise the money, and instead of spending it in war, spend it in any other way, — you will have still more wealth.

If this be just, it will enable us the more clearly to appreciate two opinions which have been advanced on the subject of national debts.

One is, that a national debt is, to the whole amount of it, or at any rate to a certain part of it, not a defalcation, but an addition to the mass of wealth.

The other is, that admitting the debt to be a defalcation from the mass of national wealth, yet the discharge of it would be, not an addition to that mass, but a defalcation from it.

Both these opinions have had their partisans; for in the whole field of national economy, there is not a proposition, how clear soever, the contrary of which has not had its partisans.

As to the first opinion, one way in which it is maintained is, by looking exclusively to one side of the account — by looking at the income coming in to the annuitants, and not looking at the income going out of the hands of those by whose contributions the money for the payment of these annuities is supplied.

Another way is, by imagining the existence of a capital equal to the capital borrowed and received by government in exchange for the annuities granted — borrowed, and spent as fast as it is borrowed, not to say faster still. This being a new capital created, goes, according to the reckoning of these politicians, in addition to whatever may have been the amount of the old one.

This notion appears to have had for its ground and efficient cause, the language used by the man of finance and the man of law, in describing transactions of this nature. Can a thing have been created, and yet never have existed? Fiction is the parent of confusion and error in all its shapes. False conception generates false language: false language fixes false conceptions, and renders them prolific and immortal. Such as opinions have been, such is language: such as language is, will opinions be.

Would not the nation be the poorer, if a sponge were passed over the national debt? Would not there be so much property destroyed? Not an atom more than would be produced at the same instant. Would not the nation be less wealthy? No: not, at least at the instant of the change. Would it be less happy? Yes: wretched in the extreme. Soon after, would it be less wealthy? Yes: to a frightful degree, by reason of the shock given to security in respect to property, and the confusion that would ensue. Thirty millions a-year that used to be received by annuitants, no longer received — thirty millions a-year that used to be paid in taxes by all classes, and all individuals together, for the payment of those annuitants, no longer paid. National wealth would no more be diminished by the sponge, than it is when a handkerchief is transferred from the pocket of a passenger to the pocket of a thief. Sum for sum, however, the enjoyment produced by gain is not equal to the suffering produced by loss. In this difference, traced through all its consequences, lies the mischief, and the sole mischief, of bankruptcy or of theft.

Annuities paid by government are paid with a degree of regularity (not to speak of certainty) which would in vain be looked for to any extent in annuities paid out of particular funds by individual hands. In the loss of this species and degree of convenience, consists the whole of the loss that would be incurred by the complete discharge of the national debt. This convenience is certainly worth something in the scale of wealth; but it can scarcely be considered as any real tangible addition to the mass of those tangible things, of the mass of which the matter of wealth is composed. There is also inconvenience attending the payment of taxes — (those taxes by the produce of which the matter of these annuities is supplied) — an inconvenience superadded to that which consists merely in the privation attendant on the parting with the money paid in taxes.

On this convenience attending the receipt of the annuity, is grounded another convenience in respect of the facility attending the purchase and the sale of it — attending the process of converting capital into income, and reconverting income into capital, when capital happens again to be the thing wanted.

As to the ground of the other opinion — it appears to be, that if the money taken in taxes, to be applied in discharge of the debt, had not been so taken, but had been left in the pockets of those to whom it belonged, it would have been spent by them, each in his own way, and by that expenditure an addition would have been made to the mass of national wealth — but not so if applied in discharge of debt. But the fact is, that whatever is so applied is given, received, and employed; — the whole of it in the shape of capital; — whereas, had it been left with the parties by whom it is paid in taxes, it would have been employed, more or less of it, as income is employed, when it is said to be spent, without return or hope of return. What the proportion may amount to between the part spent as income, and the part employed as capital, and thereby employed in making a growing

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addition to the mass of national wealth, will be considered presently. For the present, it is something, not to say sufficient, that in the one case it is only a part that is employed in making an addition to the mass of wealth, and in the other case the whole.

The support given to this opinion is given in two ways. One is, by thinking nothing of what becomes of the money taken in taxes, and made over to the annuitants in discharge *pro tanto* of the national debt, but considering it as annihilated or thrown away.

The other is, by considering the labour paid for by the money when spent by the proprietor, instead of being taken from him in taxes, as being employed, all of it, in the shape of pecuniary capital, in making a correspondent addition to real capital — just as would have really been the case with the labour paid for by that money, had it been been made over to annuitants in discharge of so much debt.

That a part of it would really have been so employed, does not admit of doubt: — the error consists in considering what is true only of this part, as if it were true of the whole. Let us observe the difference between this part and the whole.

Admitting an increase of wealth, and that a gradual and regular one, the productive capital of the country, taken together with the growing mass of consumed and reproduced wealth continually produced by it, must be considered as increasing at compound interest. The rate of interest can scarcely be taken as so high as 2 per cent.; for at 2 per cent. compound upon the capital, whatever it may amount to in any year, the quantity of it would be rather more than doubled in thirty-five and a half years. The most sanguine estimator will not, I imagine, regard the increase of national wealth to have been, even for the last thirty-five years, increasing at nearly so rapid a rate. If the quantity and value of productive capital have gone on increasing at this rate, the quantity of growing income must have gone on increasing at the same rate; since it is only from the income of that or the preceding year, that the addition made to the capital of any year can be made. If the quantity of growing income have gone on increasing at this rate, the mass of population must have gone on increasing at the same rate, save and except in so far as an increase has taken place in the degree of relative opulence, *i. e.* so far as an average individual of the posterior period has been richer than an average individual at an anterior period — so far as wealth has gone on increasing faster than population. That wealth has gone on increasing faster than population, is what I should expect to find to be the case; but that the increase should be anything like as much as double, *i. e.* half as much again, seems too much to believe. The half, or thereabouts, of the aggregate wealth, will be that which is shared among individuals of the poorest class: — and in the case of that class, the wealth of an average individual appears, within the period in question, to have rather diminished than increased.

I take therefore two per cent. for the rate of accumulation—not as the true rate, but for a rate which, though considerably too high, is near enough to the true rate to answer the purpose of illustration. Taking, then, 20 per cent. as the gross ratio of the real income produced by that real capital, to the real capital by the employment of which it is produced,— this two per cent. would constitute one-tenth part of the gross income: — and the part out of income added to capital every year is one-tenth part of the whole mass, of which the other nine parts are partly consumed for maintenance, partly employed in keeping up the real capital *in statu quo:* that is, in a condition to give birth to the same quantity of real income in each subsequent as in each preceding year.

The whole income, then, of an average individual, may for this purpose be considered as divided into ten parts: — of which nine parts go for present maintenance, added to the expense of providing for reproduction without decrease or increase, and the other tenth to positive increase.

This being the case with the whole income of the average individual, the same division in idea may be made of any part of that income; and, for instance, of that part which he is made to pay in taxes: if he had had none of it to pay in taxes, one-tenth is the part which would have been employed by him in making a net addition to the capital, and thence to the growing wealth of the country, as above.

On this supposition, the addition made to wealth by a million taken from national income by taxes, and employed in the discharge of the national debt, is to the addition that would be made to it by the same million if left in the pockets of those to whom it comes in the shape of income, and left to be employed by them, each in his own way, as ten to one. I say, for illustration, as ten to one; but twenty to one is the proportion I should expect to find come nearest to the truth.

CHAPTER VII.

NOSCENDA.

*Noscenda:** by this term I understand those matters of fact, forming the subject of the

* Of *noscenda*, the most instructive indication I know of is that given by M. Necker, *Admin.*

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science, termed statistics; — including *data* * and *danda*, between which the field of noscenda is divided, in portions which of course would be found different as yet in each community, and in each portion of time.

Statistical matter being food for curiosity, many derive amusement from the perusal of it—some, consequently, a profit from the furnishing of it. On this account, so far as depends upon *inclination*, the operation of furnishing it belongs constantly, and, so far as depends upon *knowledge* and *power*, occasionally, to the head of *sponte acta*: — *agendum*, therefore, on the part of government, the completion of the requisite stock of *knowledge* and *power*, by furnishing the data to individuals, or even collecting them itself, whensoever that operation can be performed without preponderant vexation and expense. In every walk of life, public and private, — public more especially,—publicity—publicity — is the best guardian of virtue.

The collection and publication of statistical facts being attended with *expense*, no institution should be set on foot for the furnishing any such articles, without a previous indication of the benefit derivable from such knowledge, and a conviction that it will pay for the expense. The expense necessary for one purpose, may however be sufficient for the accomplishment of many purposes.

The following are among the subjects on which the aid of government appears desirable in collecting the facts: —

I. Forensic steps, documents and costs, *i. e.* the steps taken — the documents exhibited, in each cause, with the expenses regularly attendant upon each.

Uses to the administrator, the judge: — 1. Showing the ground afforded for each successive step and document by the several preceding ones; 2. Costs to be stated, — that in each instance, so far as justice requires, and ability extends, the burthen may be thrown upon the party in the wrong.

Uses to the legislator: — 1. By the operation of publicity, check upon injustice, as well collateral as direct, on the part of the judge; — 2. In the way of instruction,—view of the price paid for direct justice, in the shape of *collateral*, and in some degree *unavoidable injustice;* viz. in the triple shape of vexation pecuniary expense, and delay, — paid in each case individually, and thence in each class of causes collectively,—the causes being for this purpose divided into classes; — 3. Ultimate use to the legislator—and the public, *reducing* continually, and finally keeping to its minimum, by successive improvements, the quantity of injustice in both shapes, collateral as well as direct.†

The expense of registration will be amply paid for, by the first of the uses to the legislator, added to the two uses to the judge. The expense of *publication* might be much reduced, as well as the utility in the way of instruction increased, by throwing the matter into a *tabular form*, abridged in bulk, and digested under heads.

II. Births, marriages, and deaths.‡

Use to the judge: — Use of the several documents in the character of *evidences* constituting the basis of the most important, because most extensive, class of rights and obligations — rights of property derived from succession — rights and obligations of various sorts derived from condition in life.

Use to the legislator: — Indications of the state of population, — increasing, stationary, or declining; — thence, in case of check or decline, general or local, indication of the extent of the causes and the remedies; indications of the amount of profit and loss by war, — loss real in every case — net profit, seldom more than ideal (wealth taken into the account,) from the most successful war.

In every line of management, private or public, a necessary guardian to good economy is good book-keeping.

Mode of publication abridged, digested, and tabular, as above.

To the ecclesiastical function, wherever established, the business of registering and transmitting *noscenda* of this class (not to speak of others) seems a natural appendage. How can the shepherd feed his flock, if he know them not? — how know them, if he cannot number them?

III. Contracts of all sorts; viz. such as by their importance are worth registering. Mode of registration, in some cases, transcription; — in others, abbreviation — in others, simple mention of existence.

Use to the administrator, the judge: — Uses of these documents in the character of evidences, as above.

Uses to another sort of administrator — the collector of the revenue — in the case where documents of this sort have been taken for the subject of taxation: — 1. Check to

des Finances, — but without reference to particular uses as determined by particular *agenda* or *non-agenda*.

* The most instructive body of data the world has yet seen, is that furnished during Mr. Pitt's administration, principally by the House of Commons' Committee of Finance, of which the pretended reimpression is but a mutilated extract.

† In this line, an interesting example has been lately set by the Danish government, on the occasion of the tribunals lately instituted under some such name as that of *Reconciliation Offices*. I speak of the *design*: materials for judging of the *execution* have not reached me.

‡ By 6 & 7, W. IV. c. 86, a general register of births, marriages, and deaths, was established in England. A similar measure for Scotland has been before Parliament, but has not yet (October 1838) passed.—*Ed.*

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fraud on the part of the intended contributor; 2. Check to peculation and negligence on the part of the *sub-collectors*.

Uses to individuals at large:—1. Prevention of fraud by forgery—whether in the way of fabrication or alteration; 2. In the case of contracts of conveyance, viz. of specific articles of immoveable property *inter vivos*, prevention of fraud, viz. of fraud commissible by the repeated sale of the same article to different purchasers.

Uses to the legislator:—Various, according to the nature of the contract. Examples:—1. For the purpose of finance, see above, uses to the collector of the revenue;—2. In the case of contracts circulating as money, and constituting a species of paper money,—view of the quantity of it, in comparison with the quantity of metallic money; thence of its influence on the aggregate prices of goods, and on public, or say rather general, credit; *i. e.* view of the actual depreciation of money, and the danger of general bankruptcy;—3. View of the state of the nation in respect of improvement—progressive, stationary, or declining—in the several lines of action which constitute the subject of the several classes of contracts, and the number of contracts of each sort entered into within a given period of time, compared with the several preceding periods of the same length.

Mode of publication,—abridged, digested, and tabular, as above. In the case of such contracts as are considered as proper to be kept *secret*, the publication may extend to all points but the particular ones in respect of which the secrecy is required; and aggregate quantities may be given at any rate

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OBSERVATIONS

ON THE

RESTRICTIVE AND PROHIBITORY

COMMERCIAL SYSTEM;

ESPECIALLY WITH A REFERENCE TO THE DECREE OF THE SPANISH CORTES OF JULY 1820.

"*Leave us alone.*"

FROM THE MSS.

OF

JEREMY BENTHAM.

EDITED BY JOHN BOWRING.

(ORIGINALLY PRINTED IN 1821.)

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PREFACE.

Correct views of the changes which it is desirable to introduce into our present plan of commercial policy, do not appear to the writer to have been in all respects well condensed, or satisfactorily developed; and he was not a little gratified, when the ill-judged decree of the Spanish Cortes, dated in July last, induced his venerable friend Mr. Bentham, whose profound and discerning mind had been for some time directed to the interesting events of the Peninsula, to record his opinions of that baneful anti-commercial system which has too long blinded the eyes and contracted the habits and feelings of so large a portion of society.

It will not be the least, though it has been one of the latest, practical lessons which has been taught us, — and taught us, too, by that best of instructors, suffering experience, — that no system of commercial policy can be ultimately beneficial, which is reared upon the selfish principle alone. To sacrifice the interests of the dependent many to the ambition or the avarice of the privileged few — to build a theory of successful scheming on the mere usurpations of fraud or violence — to make the pursuits and the profits of commerce depend on the intolerant dictation of military or of naval power, without any reference to the wants or wishes or interests of those concerned, — would seem, if now for the first time projected, as idle in the conception, as impracticable in the execution. Yet such a system has been but too long in vogue. Flattering to our but too prevalent feeling of national pride, this system (in defiance of the benign counsel of the moralist) has made us deem it excellent, because we have the strength of a giant, "to use it like a giant." Almost necessary, perhaps, to a constantly drained treasury, it has ever refused to sacrifice a penny in possession to obtain a pound in reversion. It has retained the salt-duties, by which *millions* are *lost*, because through them *thousands* are *gained*;* it has, for the miserable produce of a tax on wool (miserable even in calculation, and how much more so in the result!) driven us from some of the most important sources of commercial profit, and abandoned large classes of industrious hands to hopelessness and the poor-laws. We have too long and lamentably been pursuing our path of error. Retract, return we must, sooner or later; and to-morrow we shall retract with a worse grace, and with a greater bulk of suffering, than to-day.

* The salt duties were repealed in 1823. — *Editor.*

Spain is a country which possesses immense mines of agricultural wealth, and offers in consequence the strongest motives for the direction of her capital to agricultural improvement; since it might be so employed in the perfect security of a profitable and a prompt return: while, on the other hand, this new commercial system will as certainly prove calamitous as a better system might be beneficial. To Spain, it must be confessed, having little of that fictitious influence which has too often succeeded in *compelling* nations to unwarrantable self-sacrifices, that system will be more fatal than it has been to England. But the system is radically bad: it is bad everywhere. It is a poison that may act differently upon different subjects: its progress may be concealed, may be delayed; it is poison still, — and it is deadly.

The writer had originally intended the reorganization of the following pages, by keeping the case of Spain entirely out of view: but he found every attempt to increase, by any arrangement of his own, the effect he seeks to produce, frustrated by the constantly recurring conviction, that that effect would be most assuredly produced by allowing the Spanish decree still to occupy a prominent place. That decree is a fair specimen of the anti-commercial spirit. It does not go quite so far as some of our *sweeping* prohibitions — prohibitions made in all the wantonness of uncalculating arrogance: but it goes far enough for our arguments; and for anything beyond it, fewer arguments would of course suffice.

The writer cannot, however, in this place forbear expressing his astonishment at the reproaches and indignation with which, he is given to understand, the decree of the Cortes, which prohibits so many British manufactures, has been received in different parts of this country. Spain will punish herself — is punishing herself but too severely — by her erroneous policy; and interested as is the writer in the well-being of that country — the witness as he has been of so much of her suffering, and so much of her glory — bound by strong ties of personal affection to many of the illustrious actors in the late momentous and exhilarating changes, — he feels, and powerfully feels, disappointment and regret that her legislators should have committed an error so fatal: but he may be allowed to ask, on what plea of honesty or consistency can England object, who so inexorably shuts her ports to the manufactured produce of foreign hands? aye, even of those of her own sub-

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jects — of her own colonies! Is it for us, forsooth, to complain that high duties or severe interdictions prohibit the circulation of our fabrics, while the cheap linens of Russia, the fine ones of Germany, the cambrics of France, the carpets of Turkey, the cottons of India, and the silks of China, implore an admission to our markets, with all the claims of superior cheapness and superior excellence, and are met with a stern unyielding No?* We imagine — complacent souls! — that other countries will give a welcome to the works of our looms, because we offer them so honest an equivalent — the prohibition of everything produced by theirs. Their wool and their fruit, their oil and wine, their drugs and dyewoods, we will receive from them in our abundant generosity, as we are not able to produce them. But what right have we to complain, if they copy the example we have given them, and sullenly turn our manufactures away? They show how they value, and how well they can apply, the good lessons we have given them. We would persuade them, perhaps, that it is for their interest to take our goods: they are cheaper, better — nothing more reasonable. But, in common justice, if they have a word to say to us on that score in favour of their own, let us, pray let us listen to them. Shall our answer be — No, never?

It would tend greatly to facilitate the fair consideration of this most important question, if, in reckoning up the sources of national wealth, we were more accustomed to generalize, and less prone to draw a broad line of demarcation between commercial and agricultural interest. The prosperity of a nation is to be judged of from its aggregate productions; and in our general relations, if the commercial and the agricultural representatives of wealth be as two to two, and if by any changes they should fluctuate in the proportions of three and one on either side, the sum total of benefit remains the same. Such great fluctuations are no doubt calamitous in their progress, and can only take place where an excessive momentum is given by the application or removal of restrictive or impelling measures, from that ever-eager disposition to patch up temporary evils by permanent legislatorial enactments: but the habit of looking at different sources of riches and strength with an exclusive and narrow vision, has impelled men to the most fatal conclusions, and led in a thousand instances to the most mischievous of all attempts; to apply apparent remedies to the necessities of separate interests, without any reference to their connexion with or proportion to the common, the universal interest.

* It is mere quibbling to say that these or any of them *may* be introduced, when extravagant duties bar their introduction.

Satisfactory it is, however, to observe the rapid progress which sound notions of commercial policy have made in the world; and it is peculiarly satisfactory to notice their prevalence in those high quarters from whence (if at all) relief must ultimately come. The generally correct views which have been developed in the recorded opinions of the President of the Board of Trade; the acknowledgment from the lips of Ministers, that many and grievous evils have resulted from the present system; the reports of the Select Committee of the House of Commons; the representations of the merchants of the metropolis, which have been re-echoed by the intelligent merchants of the outports, and which have found a concordant voice even on the other side of the Atlantic; everything gives room to hope that most important changes must soon and certainly be introduced.

It has generally been the fate of those who have pointed out the errors, defects, and dangers, of any long-established institutions, to be met with the taunting defiance — "Give us something better;" and though there has been generally more art than honesty in such an evasion, it has too often produced the intended effect, by turning men away from the honest effort at melioration which would be necessarily called into action by a conviction of the mistakes of the existing system. On this question, however, that which nations have most earnestly to entreat from governments is, that the latter would cease to honour them with any officious interference: "Their tender mercies," however well intended, "are cruel." The best boon they can give is to let the stream of commerce flow as it will: its tide is strong enough to bear away all impediments; and governments are but too much the victims of self-deception, when they imagine that their decrees of prohibition or of encouragement do really produce the effects they contemplate. Those decrees are erected against and opposed to the natural tendency of things, and are in the end as absurd and as ineffective as it would be to direct the winds by an order in council, or to manage the tides by act of parliament. The evils of such interference are produced, uncontroulably produced, — they attach necessarily and invariably to it; but the good intended is not of such a character that it can be condensed into a cornucopia, whose tangible riches are to be distributed or withheld at the caprice of those who fancy themselves privileged to grant or to deny them.

In making these observations, let it not be imagined that the writer deems it practicable or desirable, by any one measure, violently and suddenly to shake and overthrow the now established commercial fabric. He would have the great principle of the freedom of

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commerce recognised by some public act, and by degrees, but as soon as may be, everything brought into that great principle. In many branches of commerce, the transit would be easy: with these we might begin, and step by step trace back the mistaken road.

And finally, let it not be forgotten, as a motive for reverting to a better system, that England no longer possesses the physical power of enforcing submission to her desires, when those decrees are friendly to nations whose local circumstances formerly made them so much dependent on the protection or forbearance of our government. Our ships cannot now blockade their ports, nor assume the exclusive right of conveying to them the foreign commodities they need. They are no longer compelled to receive their supplies from our warehouses; nor is that state of things likely to return. Franklin spoke like a practical philosopher, when he said that the best plan of policy would be to make England one free port. With her immense resources, of mind, of wealth, of industry — with everything, indeed, which can contribute to her commercial superiority — could she be spared the interference of those who, intending perhaps to protect, manage constantly to wound and injure her, what might she not become?

Of the following tract, everything that is emphatic in its style, or irresistible in its reasonings, belongs to its distinguished author. He has seized on, and applied with singular felicity and energy, all the great bearings of this interesting and important subject; and the writer has only ventured to blend with the original matter a few practical and local observations which have come under his personal cognizance.

OBSERVATIONS, &c.

SECTION I.

NATURE OF THE PROHIBITORY SYSTEM.

JUST as the period was expiring, beyond which, according to the Spanish constitution, the Cortes had no power to continue their sittings — at a moment when affairs the most urgent, and interests the most important, necessarily distracted and divided their attention — the outline of a law was precipitated through its several stages, prohibiting manufactured woollens, cottons, linens, and silks, and attaching heavy duties to the introduction of many other manufactured articles.* So hurried was this measure, that its details were obliged to be referred to the finance minister; and so unexpected, that all the correspondence which communicated to this country the first news of the decree, breathed nothing but surprise or disappointment, regret or anger. Yet there can be no doubt the real, as the averred object was, to give encouragement and increase to the manufacturing branch of national industry, by compelling the employment of home productions, in lieu of those which Spain had been accustomed to receive from other manufacturing countries. It was certainly not *intended* to do mischief to those countries, either by interfering with their trade, by lessening their wealth, or by exciting their feelings of hostility. It was, indeed, neither more nor less than an application of the system of factitious encouragement of the domestic production in the indirect mode; that is, by discouragement applied to the same articles when produced by foreign countries.

The expediency of such a measure may be conveniently considered in two points of view: — the general, in its application to all countries; the particular, as especially affecting Spain.

It may be laid down as a universal maxim, that the system of commercial restriction is always either useless or mischievous; or rather mischievous in every case, in a less degree, or in a greater degree. In the judgment of the purchaser, or the consumer, the goods discouraged must be either better than those which are protected, or not: if not better (of course better for a fixed equivalent,) they will not be bought, even though no prohibition exist: here then is usefulness, or mischief in the lesser degree. But the case, and the only probable case, in which the fictitious encouragement will be applied, is that where the goods excluded are better, or in other words cheaper, than those sought to be protected: here is unqualified mischief, mischief in the greater degree.

* This injudicious and baneful decree is singularly illustrative of the extreme absurdity of that part of the constitution which only allows the Cortes to sit for three, or at most four months of the year. Whether they have little or much to do, they are compelled to employ the same time about it. They are to be treated, as an able Portuguese Journalist observes, like babies, who must be put to bed at a fixed hour whether they are sleepy or not.

The writer takes it for granted that the decree exists, though neither he, nor any individual he has seen, is able to speak to the fact of its publication.

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It may be desirable here to explain that the word *better*, when used, means better at the same price—*i. e.* cheaper. Price is, in truth, a more convenient standard, because an unfluctuating and determinate standard; quality not. Better, means, then, that in the opinions of the purchasers or the consumers, the article is more advantageous, or more agreeable; and it is better in the proportion in which it is more advantageous or agreeable.

This premised, we proceed more satisfactorily to consider the results of a prohibitory law of this sort in all the points of view of which it is susceptible.

When, in the view of favouring home commodities, a prohibition inhibiting the introduction of foreign rival commodities is obtained, that prohibition is either obeyed or disobeyed: obeyed, if the home article be purchased instead of the foreign one, or if neither the one nor the other be purchased; disobeyed, if instead of the home article, the foreign one be purchased. In the case of such prohibition, obedience takes place in some instances; disobedience in other instances.

Case I. The prohibition obeyed, and the purpose answered, by the purchase and use of the home article instead of the rival foreign article.—The price paid for the home article is greater than would have been paid for the rival foreign article, had the prohibition not existed; if not, the prohibition would be without an object. What, then, is the result to the consumer? The difference between the one price and the other; the injury or loss which he sustains, is equivalent to the imposition of a tax of the same amount.

But the pocket into which the produce of this sort of tax goes, whose is it? that of the public? No! but that of the individual producer of the article thus taxed. To the people at large, without diminishing the amount of other taxes, the effect is no other — the benefit no greater, than that of a tax to the same amount would be, if, instead of being conveyed into the national treasury, it were pocketed by the individual collectors.

If, instead of the prohibition in question, a tax to the same amount had been imposed on the rival foreign article, the produce, instead of being thus given to the collectors, would have been conveyed into the public purse, and by the whole amount have operated as a saving to the people, in diminution of the contribution that would otherwise have been exacted through other channels. Not to the whole amount, it may be said; for in case of the tax, the expense of collection would have been to be deducted. Yes, to the whole amount; for the expense of enforcing the prohibition would assuredly be as much as, probably more than, the expense of collecting the tax.

Case II. The prohibition obeyed; the rival foreign article not purchased, but the home article not purchased.—Here, though the law is obeyed, the purpose of it is not answered.

This will be the effect, insomuch as the advance of price caused by the prohibition deprives the consumer of the power of purchasing it: the home article too bad in quality; the foreign too dear, from the excess of price produced by the risk of evading the prohibition. The home article is then neglected, in consequence of the disgust produced by its comparative bad quality — the foreign is not purchased, on account of its dearness; which dearness is the result of the prohibiting law.

In this case, though no loss in a *pecuniary* form is produced to those who, antecedently to the prohibition, were accustomed to purchase and to enjoy the article in question — though no loss in a tangible and measurable form is suffered, — yet in the form of comfort — in the form of that wonted enjoyment on which the article depends for the whole of its value, the loss is not less real, and the loss is incalculable.

True it is, that whatsoever the consumers in question would have expended, but for the prohibition, on the articles in question, is left in their hands unexpended, to be employed in other articles; and therefore the loss is not total. True; but there is a loss: a loss is implied in their being compelled to purchase articles which they would not otherwise have chosen. The amount of loss is not within the reach of calculation; but where it is possible to erect a comparative standard of price or quality between the goods which would be purchased but for the prohibition, and those which are purchased on account of the prohibition, the loss presents itself in a tangible and measurable shape.

Case III. The prohibition disobeyed: the purpose not answered; the home article not purchased for consumption; the rival and foreign article purchased and consumed, notwithstanding the prohibition.—Then not only is the law disobeyed, but its purpose is more manifestly frustrated than in either of the foregoing cases.

Under our present supposition, the price of the foreign article to the purchaser and consumer cannot but be raised above the current price it held before the prohibition; for the prohibition cannot be evaded without extra labour employed, and risk incurred, by those engaged in the conveyance of it from the hands by which it is exported from the foreign country to the hands of the consumer; — and fraudulent labour is of all labour the most costly. Here, too, in respect of the loss and burthen to the consuming purchaser, the difference between the price of the foreign article when allowed, and the foreign article when prohibited, has, by the whole amount

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of it, the effect — the bad effect — of a tax: and by every increase given to the severity, or in any other way to the efficiency of the law, a correspondent increase is given to the amount and burthensomeness of this unproductive substitute to a government tax.

And into whose pockets is the produce of this worse than useless, this baneful substitute to a tax, conveyed? Into the pockets of the public? No! Into the pockets of the home-producers, whom, at the expense of all their fellow-countrymen, its endeavours are thus employed to serve? No! but into the pockets of those whose labours are employed, whose lives and liberty hazarded, in effectually causing the prohibitory law to be disobeyed, and the design of it frustrated.

The persons for whom this favour is intended,—what title have they, what title can they ever have, to such a preference — to a benefit to which a correspondent injury, not to say injustice, to others, — an injury, an injustice to such an extent, —is unavoidably linked?

And in point of numbers, what are the favoured when compared with the disfavoured? Answer: The few; the few always served, or meant to be served, at the expense of the many.

This one observation attaches inevitable and unanswerable condemnation to the measure, unless it can be shown that the sum of profit to the few is more than equivalent to the sum of loss to the many.

But in favour of such a supposition no reason whatever presents itself. If any one believes he can discover such a reason—if any one imagines it falls within the possibilities of the case, to him it belongs to produce it.

The loss sustained by those on whom the burthen of the measure most immediately presses — who are, as it were, in actual contact with the measure, is not the only loss. Antecedently to the prohibition, the articles now prohibited were furnished by foreign producers, to whom home articles to an amount regarded as a fair equivalent were supplied in return, and were in fact the means of purchasing. Deprived now of the means of paying for the goods of the country which issues the prohibition, the foreign producer is driven from the market. And here, on the very face of the transaction, is another set of men on whom a burthen is imposed — or, which is the same thing, to whom a profit is denied — equivalent at least to the expected benefit, supposing it received, and at whatever calculation it may be taken.

Here, then, in addition to the injury done to the universal interest, is an injury done to a particular interest, equal to the benefit contemplated to the other particular interest for whom the prohibition was made.

Not so, it may be objected — not so; for what they before purchased with the prohibited goods, they will continue to purchase with other not-prohibited goods, or with money, which is still better.

Vain, however, is this objection. In money perhaps they would have paid for these our goods, rather than have gone for the like to some other country; in money they would have paid for them, could they have got it. But they could not have got it except by selling their goods. If they have sold their goods and realized their profit, why should they bring the money they have produced to you?

But they will pay in other goods. If we want those goods, and can pay for them, and will allow them to be brought to us, we shall have them in any case, whether the others be prohibited or not: so that the question remains as it was before.

This is the point at which any person who, being determined to justify the prohibitory system at all events, though at the same time conscious of its unjustifiability, would be apt to attempt a diversion by leading the debate into the subject of the balance of trade. But, without going into the details of that controversy, a demonstration of the reality of the loss, founded on universal experience, may satisfy even the *malâ fide* adversary.

After having been accustomed to sell the whole or a part of his produce to this or that particular customer, no man who knows that that customer is prevented from sending the only goods he was used to send in return, but would understand himself, feel himself, to have sustained a loss. A loss he would necessarily sustain, and by the whole value of the goods, supposing him not to find another customer — and if a less advantageous customer than before, the loss, though less in amount, not less real in fact: and if in the case in question it be alleged, that in the room of every person so prevented by the prohibition from giving for the goods the usual equivalent, another customer comes of course — he who makes the allegation that such a second customer comes of course, is bound to produce him — to provide him — for his argument at least.

The general result would be more clearly perceived from an individual case in point: — Spain sells to England wine, wool, oil, fruits, &c.; she takes in return a great variety of manufactured and other articles. On a sudden, a prohibitory degree is passed; — Spain is no longer allowed to buy the foreign manufactured articles. Of the surplus of Spanish produce not sold and consumed at home, a great proportion was bought for England in return for the English articles sent to Spain. Where are the Spaniards now to find customers for that produce? Not from England; for they have deprived England of the means

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of buying: not from other countries, at least from those to whom the same prohibitions apply.

Add to these necessary ill consequences the probable ill consequences produced by counter restrictions and prohibitions against *your* goods, in countries the introduction of whose goods you restrict or prohibit, and the quantum of loss or suffering will be greatly increased.

Thus, then, must the question be finally put: — The burthen to those who are injured, — what is its amount? The benefit to those who are meant to be favoured, — what is its amount?

Persons, human feelings, pounds, shillings, and pence, in English, in Spanish reals of Vellon — to all these subjects must the arithmetical calculation be applied, before we can come to any just and well-grounded conclusion: — and when there are two parties to the question — two contending parties — the arithmetical operation must be applied with equal correctness to both sides of the account; otherwise it will be no more an honest account, than if, in a statement of account between A and B, all the items on one side were omitted.

Yet, in the account kept of the pretended or supposed encouragements in question, the unreciprocal operation is the sort of operation that is performed — that has been commonly performed.

SECTION II.

MISCHIEFS OF THE PROHIBITORY SYSTEM.

THE prohibitory measure is introduced, then, into the country in question, in order to compel the sale within itself of its own productions, in opposition to foreign productions, under the notion of their being rival productions. Reader, whoever you may be, to avoid difficulties in the expression, we will call that country *your country*.

Mischief I. Dearer commodities are forced upon your countrymen, instead of cheaper; and all are sufferers by whom the cheaper article was, anterior to the prohibition, bought or consumed: in many cases, the whole population of the country, excepting such as were disabled by poverty from becoming purchasers. The gross sum of injury will be the difference of price between the home-produced and the foreign-prohibited article, calculated on the whole amount of consumption.

The loss in Spain immeasurably great; — probably not less than a fourth on all the manufactures consumed. Amount of imports of manufactured articles is about £500,000 yearly, from England only. (See Table A.)

Mischief II. Mischief, by commodities of inferior quality being forcibly substituted to commodities of superior quality. Sufferers, as before, all those who, antecedently to the prohibition, employed or consumed the good article, and who now are compelled to employ the bad one, or who employ none. — Amount of loss unsusceptible of calculation — incalculable.

In Spain, as before, peculiarly great. With the exception of a few silk manufactures, and some of fine woollens, which have lately been brought to a state of great excellence without the prohibitory system, and which, for their continued improvement and ultimate perfection, require no prohibitory system to protect them — with the exception of a few manufactured articles of silk and wool — the manufactures of Spain are in a state of wretched imperfection. Many excluded fabrics cannot be produced there. Bombazines, for instance, an article of very general consumption — an article so peculiar and beautiful in its perfect form, that it has not yet been manufactured even in France, where the silk-fabrics are in such an advanced state. So, again, the articles produced by the coarse long wool of this country; this wool being peculiar to England. Inferiority applies necessarily more or less to all home-encouraged articles compared with foreign prohibited articles. Manufactures become cheap and good in proportion to the advantages possessed in their creation; and the state of the mechanical arts in Spain being exceedingly backward, the production of articles moderate in price and excellent in quality cannot be contemplated. Another contingent mischief then follows the prohibition — an evil even to the few producers. The strongest motives to emulation being removed, the home-goods will not be improved as they would be when impelled by the rivalry of the superior foreign goods. Permanent inferiority is therefore likely to be entailed on a nation by the prohibitory system, and misdirection of capital from objects leaving certain and larger profit, to objects promising only uncertain and lesser profit.

Mischief III. Mischief, by the cessation or diminution of the demand for the home-produced commodities; such as before the prohibition were taken by the foreigners in exchange for the commodities now prohibited. Sufferers, those who antecedently to the prohibition were engaged in the production of the commodities so taken in exchange. Amount of this suffering uncertain. It will have place in so far as the prohibition takes effect: so also when it is evaded, for it cannot be evaded without a rise of price proportioned to the risk regarded as attached to the endeavour to evade. Suppose, then, the price to the customer in your country doubled, the quantity of commodities that can be employed in the purchase of your home-produced commodities is reduced one-half.

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In Spain, again, this third mischief singularly great. Of some of her exporting produce, the greater part is bought for foreign markets by foreigners. Distress produced by the prohibition proportionably great. In 1819 an instance in point occurred, when in the interior provinces (particularly La Mancha and Castille) great distress was occasioned among the agricultural producers, by the excess of produce remaining unsold on their hands: in some districts the harvest was left to perish on the ground. But this was under the reign of the restrictive system only: how much would the evil have been augmented under the prohibitory system? It appears by Table C, that the amount of produce yearly imported into England from Spain varies between £1,500,000 and £2,000,000 sterling.

Mischief IV. Mischief by the loss of the tax, which antecedently to the prohibition was paid by the commodities now prohibited; *i. e.* of the correspondent supply received from that source by the government for the use of the people. Sufferers, all payers of taxes; *i. e.* all the population. Amount of the suffering, the annual amount of the supply received from this source.

In Spain, again, the mischief eminently great; the duties on imported goods being one of the most important sources — nearly a fourth of the whole revenue. The net amount of custom-house revenue from June 1820 to June 1821, is calculated 80,000,000 reals de Vellon. The expense of collecting the custom-house revenne is nearly 25 per cent.; its gross amount is about 100,000,000 reals, or one million sterling.*

Mischief V. Increase given to the number of smugglers, in consequence of the prohibition, and the increase of price which the persons habituated to consume or otherwise use the now prohibited commodities, will determine to give, rather than forego the use of them.

This mischief is of a very complicated nature, and branches out into a variety of evil consequences pernicious to the moral feeling — pernicious to pecuniary interests.

Of the government functionaries, whose labour, previously to the prohibition, was employed in the collection of the tax paid on the introduction of the commodities in question, the labour will now be employed in securing the exclusion of them from the hands of the intruded purchasers — or in depriving such purchasers of them, should they have reached their hands.

Suppose them to be thus seized, what is to become of them? Are they to be destroyed? Here is dead and absolute loss to everybody. Are they to be sold for government account? The benefit intended for the home producers of the rival commodity is prevented from coming into their hands. If sold with permission to be employed at home (as has been usually the case in Spain,) then is suffering created to the amount of their value to the holder, and not an atom of benefit obtained for the home producer. If sold with an obligation to export (as is the practice in England,) the loss is diminished, but not less certain: — loss of the extra value given by the labour of smuggling — loss consequent on non-adaptation to other markets — and other contingent loss, unsusceptible of calculation. At all events, all loss attaches to your own people. The commodities having passed from the hands of the foreigner whose profits have been secured, into yours, — with you the risk of the adventure now lies.

Of a part of the people, whose labour antecedently to the prohibition may have been, and, until reason appear to the contrary, ought to be presumed to have been, employed in some profit-seeking and productive operation, that labour is now, under the temptation afforded by the expected increase of price obtainable for the prohibited commodities, employed in the endeavour to introduce them and convey them to the hands of the venders, in spite of the counter-exertions of the functionaries of government; — there too is the additional loss of the amount of that labour.

We have thus, under the prohibitory decree, two contending bodies, not to say armies, engaged in constant conflict; — the custom-house officers, having for the object of their exertions to give effect to the decree, and to prevent the introduction of the prohibited articles, — and the smugglers, having for their object to evade the decree, by promoting and effecting the introduction of those articles. The government functionaries are paid voluntarily by the government rulers, out of the contributions paid involuntarily by the people: the smugglers are paid voluntarily by the people.

In the course of this conflict, lives will be lost, and other bodily harm will be sustained on both sides. Destruction of property will also have place; particularly of such articles as are the subject of the contest thus set on foot.

Nor can the calculations under this head of mischief be closed, without reverting to another mischief procured by the giving execution — the enforcing submission to the prohibition-ordinance, as against those by whom that ordinance is disregarded; — *i. e.* by the

* The ways and means for 1820–21 were thus calculated: —

Net Custom-house revenue, . .	Reals 80,000,000
Do. other revenue, ...	341,500,000
	421,500,000
Expenses of collecting, ...	109,000,000
Gross revenue, ...	530,500,000

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execution of the law against, or upon, such delinquents.

Under this head must be considered two perfectly distinguishable masses of evil: — 1. The evil of *expense*, attached to the officer created and paid, and to the other arrangements of all sorts, having for their objects the punishment of offenders, the prevention of the offence; 2. Evil of punishment, composed of the suffering of those in whom, whether justly or unjustly, under the supposition of delinquency on their parts, the punishment is caused to be inflicted.

And when — (it is a supposition due to all who have in any instance benefited by the lessons of experience, and from whom we have reason to hope that there will be no obstinate persisting in a system fraught with evil) — when erroneous views shall be succeeded by correct ones, and these prohibitory decrees be repealed accordingly,—these smugglers, what becomes of them? A return to honest labour is neither so agreeable nor so easy as, but for the improvident law, continuance in it would have been. Some by choice, some by necessity, the smugglers are transformed into freebooters. Corruption is thus spread over the morals of the people, and those who should have been the guardians are the corruptors.

Universally applicable as are the objections ranged under this head, to Spain they apply with a cogency little imagined by those who are unacquainted with the localities of the peninsula, and the long-established habits of its people. The immense extent of coast, the badness of the cross roads, the mountainous character of the country, are likely to be permanent auxiliaries to those immense bodies of organized smugglers, who from time immemorial have carried on a large proportion of the commerce of Spain. The adventurous and danger-defying character of the Spanish mountaineer, seems to have peculiarly fitted him for enterprises of this sort. Little reproach attaches to the profession of the smuggler; and the frequent representation of his bold feats on the stage, is witnessed generally with great interest, often with admiration, sometimes with envy. The popular song, "*Yo soy un contrabandista*," which recounts some of his deeds of heroism, has been long a favourite at the court of Madrid, and especially a favourite of the monarch himself.

The impracticability of carrying the prohibitory decrees of Spain into effect, is already pretty generally recognised there. As if nature had provided for its certain evasion, Gibraltar becomes the great depôt for the south, Lisbon and Oporto for the west, and the hundred passages of the Pyrenees will supply the northern and eastern provinces. Every merchant knows, that at the principal commercial ports of Spain a great part of the duties has been habitually evaded, and large portions of goods constantly introduced without the payment of any duty at all. Except on articles of considerable bulk, of peculiarly difficult transport, or of trifling value, the advance of price in consequence of the prohibition has been scarcely perceptible in any of the principal markets of Spain; and the idea is treated with ridicule, that, in case the system of prohibition should be persisted in, the enforcement of it to any considerable extent can be practicable. The amount of restrictive duties, in some cases not very high ones, was always deemed more than a sufficient price for the labour and risk of the smuggler: the harvest will now be extended, and the labourers will be abundant — the profits greater. The disbanded Guerillas will furnish recruits enough for the army of smugglers — recruits, too, who will require but little training. Even in the province (Catalonia) which it is intended particularly to favour by the interdicting system, there is scarcely a village without its *contrabandista* — scarcely a creek which does not daily witness the exploits of its smuggling adventurers — scarcely an animal which has not borne the unlawful merchandise — and scarcely an individual who does not wear part of it.

The frequent and bloody frays between the armed custom-house officers or the military, and the armed and desperate bodies of smugglers, in Spain, are notorious to every individual who has had the desire and the opportunity to obtain information on the subject. Every year numerous lives are lost; and the sympathy of the public is, where it ought not to be, — with the criminals, and not with the agents of public justice.

As to loss of liberty and comfort, the prisons under the old regime were always full even to overflowing. Of the poor mendicant abandoned children who solicited charity in the streets, the short tale of nine-tenths of them was, "I have no father." "What! is your father dead?" "No: in prison; in prison for life!" "And why?" "*Por el tabaco*" — "For smuggling tobacco," — was the constant answer.

Mischief VI. National discord: discord between the provinces for which the benefit is designed on the one part; and on the other, the provinces by which, while the burthen is sustained in its full weight, no share in the benefit will be received or can be looked for. Sufferers, the whole people, on the one part and on the other.

This mischief, too, bears most heavily on Spain. In the provinces of no country is the rivalry so strong — it might even be said, the enmity so active — as among the Spanish provinces. Different languages, different habits, different forms of local government, different provincial privileges; here, total exemption from taxation — there, excessive burthen of taxation; in some, feudality — in others, the proudest and most universal individual inde-

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pendence; — everything, in fact, seemed to demand from the Spanish legislator plans for general conciliation, — especially where the Constitution professed to level all the inhabitants of all the provinces to universal equality. But these prohibitions are introduced, it is avowed, solely or mainly for the benefit of Catalonia; a small part of Valencia may be perhaps included. The whole population of the former is 850,000; of the latter, 800,000; that of Spain, 10,500,000. But of the population of the two provinces referred to, a very small proportion is engaged in manufactures: the number engaged in the fabrication of piece goods, which the prohibition is principally meant to encourage, is probably not greater than a hundredth part of the whole population of the peninsula. And even though it be shown—but this cannot be shown—that the interest of every *labouring* manufacturer is encouraged or advanced by the prohibitory laws, we have a fearful account against the legislator; — for every individual's interest protected, the interests of more than a hundred are sacrificed. And this is a government professing to have for its object "to preserve and protect, by wise and just laws, civil liberty, property, and *all* other legitimate rights, of *all* the individuals who compose it." *

Mischief VII. Ill-will produced and directed towards you by foreign rulers and people, from the suffering or loss produced by the prohibition of their commodities, and the consequent deprivation of the sale for them.

The danger may not perhaps be great, that, by a measure which does not appear to have had for its cause any hostile affection, nor anything but a mistaken calculation of self-regarding interest, any affection decidedly unfriendly — any positive act of hostility — should be necessarily produced. Mischiefs short of positive hostility may still, with but too much probability, in every case be apprehended, from wounds inflicted in the course of the contest between self-regard on the one side, and self-regard on the other — wounds inflicted by the hands of mere self-regard though unattended with ill-will, especially where no reasonable cause for ill-will can be found. But if ill-will be kept off from a sense that no injury was intended, contempt will probably occupy its place in proportion as the impolicy of the system is manifest.

In most cases, however, the prohibitory system produces a retaliatory operation; and the power of retaliation possessed against Spain is unfortunately very great. What if other countries, whose wares are excluded from Spain, load with excessive taxation, or exclude by total prohibition, the surplus of her produce, for which she has no consumption at home? for this plan of retorting injury has been too long current. To Spain it would be a great calamity, whatever the result of the struggle might be, if the question of commercial policy should resolve itself into the question of politically weaker or stronger.

Mischief VIII. Ill-will on the part of your own people, exerted towards the ruling and influential few, by whom the burthens thus imposed have had their existence. Antecedently to the prohibition, in whom, as to the matter in question, did your people in general behold their friends? In the people of that nation, in those people — foreigners as they were and are — by whom, though not without reciprocal and equivalent benefits, such additions were made to their comfort: if not in point of affection their friends, at the least and at the worst their actual benefactors; — whether in intention or not, at any rate in effect.

Subsequently to the prohibitory system, in whom, in consequence of it, will they behold, though not their intended, yet not the less their real adversaries — the authors of their sufferings — of all the sources of suffering above enumerated? — in whom but in their rulers, these — for so it is hoped it may by this time be allowable to call them — these their misguided rulers?

At the same time, still looking at home, in whom will the people behold, in addition to their foreign friends as above, a set of domestic ones? Even in the smugglers — in those men by whose industry and intrepidity they will have been preserved (in so far as they will have been preserved) in the enjoyment of those comforts, of which, had the endeavours of their rulers been effectual, they would have been deprived.

Thus, while on the one side they will be beholding in the character of adversaries and injurers a comparatively small portion of their fellow-subjects in confederacy with their rulers; on the other side they will see in the character of friends a nation of foreigners and a body of malefactors — friends linked to them by community of interest — friends, in whose good offices they behold their only resource against the ill offices done to them by those who should have been their friends.

Upon Spain the eyes of the world have been fixed full of hope: already they begin to turn away, full of disappointment. Not new authorities for error, not fresh instances of the reckless abandonment of the interests of the greater number to the usurpations of the lesser number, did we anticipate from that land of promise. Alas! we have been deceived.

A circumstance from which the evil connected with the encouragement of smugglers is liable to receive peculiar aggravation, is the state of the system of judicial procedures. Decision being always tardy and often unobtainable, and, from the want of publicity on

* Cap. I. art. 4. of the Spanish Constitution.

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the part of the evidence, the grounds of it never known, and therefore never satisfactory, the connexion between delinquency and punishment is wholly broken. For the benefit of the lawyers, official and professional together, persons suspected of being malefactors — justly and unjustly suspected — are apprehended and mingled together in jail: jails are filled with them; when they can hold no more, they are emptied of necessity. In this state of things, what is done is done not by the hand of justice outstretched from her elevated station to give execution to the law upon offenders; not so much in the way of judicial procedure, by the exercise of authority by superiors over inferiors, — but in the way of warfare between contending armies; one army composed of revenue officers and their privates — the other composed of smugglers and their auxiliaries. If in the course of a battle smugglers are taken prisoners, it is only as prisoners that they suffer, — a sort of prisoners of war; not as malefactors. Infamy-attaching punishment at the bar of public opinion is not their portion; infamy is more generally attached to the function of the revenue officer than to the function of the defrauder of the revenue. In every country, the obtainment of good from the administration of the law depends on the excellence of the law itself. In Spain, nothing can be worse: to Spain, then, the foregoing observations specially apply.

Thus much as to the mischiefs attendant on such a state of things. Is there any per-contra good?

The greater and more manifest the sum of mischief produced to all others, the less will be the benefit to those on whom it is sought to confer that benefit: the greater the mischief, the more surely manifest; and the more surely manifest, the greater the security for the removal of the mischief-producing ordinances; which if removed, the benefit for the sake of which the mischief was introduced will be removed with them. Thus on the part of the individuals for whom the favour was intended, prudence will interdict all expensive arrangements for taking the benefit of it: it will interdict the acceptance of a favour — a favour only to be obtained by perilous pecuniary adventure, whose continuance depends solely on the continuance of human blindness; the loss of which will accordingly be an assured consequence following the removal of the film of error.

But as great expectations may be excited by the promise of the exclusive benefits to be given to the home-producer as opposed to the rival-foreigner, it may be found that many will be so misguided as to stake their hopes and fortunes on the expected advantages. What wonder, then, if the influx of competition produce a further diminution of the promised benefit? If the legislating body, who are engaged by such powerful motives to take an accurate view of the situation in which they stand — if the legislating body deceive themselves, and err under the influence of their self-deception, what wonder that others less well-informed — less intellectually distinguished — fall into the same or similar errors?

Before the tribunal of public opinion, the prohibition-system in question having nothing but misrepresentation for its support, — misrepresentation in all imaginable shapes is accordingly sure to be employed.

The sort of misrepresentation most trusted to is that by which the whole question is stated to be altogether and merely a question between natives and foreigners — between national and anti-national interests: the notion sought to be conveyed being, that whatever suffering is produced, it is by foreigners, and only by foreigners, that it is sustained — that whatever benefit is produced, it is by natives, and by natives alone, that it is reaped and enjoyed. Then comes the interrogation which is meant to impose silence: — Will you sacrifice your own interests to the interests of these foreigners? who therefore are represented to view in as unfavourable a light as can be found for them; and thereupon comes the parade of patriotism displayed, at a cheap rate, — at the expense of only a few pompous words.

But the truth has been already sufficiently unveiled — the truth, of universal application, and in an unanswerable form.

In the case of Spain, the benefit of it has been shown to be little — next to nothing: the mischief great — and greater, much greater, to Spaniards themselves, than to those whom they would call foreigners.

Thus, as towards foreigners in general — towards all the inhabitants of the globe with the few exceptions of those we call our fellow-countrymen, antipathy is excited and propagated; a foolish and degrading antipathy, not less adverse to the dictates of self-regarding prudence, than to those of benevolence and beneficence. And what is the result — the melancholy result? Every effort which a man makes to excite his countrymen to hate foreigners, is an effort made, whether designedly or not, to excite foreigners to hate them: by every attempt in which he thus labours to bring down upon his countrymen the fruits of the enmity of these foreigners, he more effectually and certainly labours to deprive his countrymen of those fruits of good-will which they might otherwise have enjoyed.

The enmity which cannot but be produced on the part of those foreigners, even by the calm pursuit of their own interests — the

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enmity necessarily produced by the frequent and unavoidable competition of interests—is surely quite enough, without making any new and needless addition; without exerting and letting loose the angry passions in any other direction, and giving to ill-will — already too active and too prevalent — auxiliaries at once so unnecessary and so dangerous.

When, for the purpose of encouraging home-industry, a prohibition is imposed on the produce of foreign industry when directed to the same object, the branch thus meant to be encouraged is either a new one or an old-established one.

It is in the former case that the impolicy and absurdity of the measure is at its maximum: it is as if, a tax being imposed, the produce of it — the whole produce of it — should be thrown into the deep. If left to itself, personal interest would direct both labour and capital to their most profitable occupation: if the new favoured occupation be the most profitable, it needs not this artificial support — if it be *not* the most favourable, the effect, if any, of the prohibition, is to call capital and labour from a more profitable to a less profitable employment. At all events, the consequence of the prohibition is this: it leads to nothing, or it leads to detriment; if not useless, it is calamitous.

In vain would it be said; Aye, but it is only intended to apply this extra-encouragement to the new occupation while in its infancy; it is only in its infancy that it will stand in need of it: the time of probation past, and its time of maturity arrived, the wealth that will then be added to the wealth of the nation will, and for ever, be greater than the wealth which for a time it is proposed to subtract from it.

By no such statement can the prohibitory measure be justified. In the infancy of any such employment, it is only by actual wealth, in the shape of additional capital, that any effectual assistance can be given to a new branch of industry. By removal of competition, increase may indeed be given to the rate of profit, if profit be the result of the newly directed labour: but it is only by the employment of capital, which must necessarily be taken from other sources, that this result can be obtained; the prohibition of existing rival establishments will not create that capital.

The case in which the impolicy is less glaring, and the intervention most excusable and plausible, is that of an old-established branch of industry; the object being, not to bestow on it factitious encouragement, and on those concerned in it factitious prosperity, — but only to preserve it from decline, and those connected with it from being destitute of the means of subsistence.

But still the former objections irresistibly apply. If the establishment be prosperous, factitious encouragement is needless: if it be unprosperous, encouragement is baneful, serving only to give misdirection to capital and labour — to give permanent misdirection; since without that factitious encouragement, interest and common sense would correct the mistakes of miscalculation as soon as discovered.

In the next place comes the objection, that if in this shape encouragement be given to any particular occupation, it must, if impartial justice be done, be in like circumstances afforded to every other. In whatsoever instance, therefore, a branch of industry should be going on in a prosperous state, any rival branch of industry, that found itself in a declining or less prosperous state, would have right to claim the interposition of the prohibitory principle — the diminution or destruction of that rival's prosperity. On this supposition, a great part of the business of government would be to watch over the whole field of productive labour, for the purpose — not the ultimate purpose, but still the purpose — of lessening the value of the produce; diminishing prosperousness, for the relief of unprosperousness; preventing *A* from selling cheap goods, in order that *B* may be enabled to sell dear ones; prohibiting *A* from producing superior articles, for the purpose of helping *B* to get rid of his inferior articles.

Here, then, is a vast proportion of the time and labour of the constituted authorities employed to no better purpose, in no higher aim, than to check prosperity as it proceeds — to sacrifice success to the want of success — to diminish the mass of habitual wealth, instead of increasing it.

Whatever be the effect of accident in this or that particular instance, operating against the general principle, the general principle may be safely assumed and laid down, that the prosperity of every branch of industry will increase and decrease in the ratio of the degree of aptitude — of moral, intellectual, and active aptitude — on the part of the persons engaged in it; on the degree, absolute and comparative, of prudence, vigilance, exertion, appropriate information, and industrious talent, possessed by them. Among the effects of the mode of supposed encouragement in question, will be its operating in the character of a prohibition on superior appropriate aptitude, and giving to inferior appropriate aptitude the advantage over it.

It is, in a word, a contrivance for causing everything to be done as badly as possible — for giving to evil the encouragements due to good.

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SECTION III.

CAUSES OF THE PROHIBITORY SYSTEM.

THE system of injustice and impolicy thus extensively pursued,—to what causes shall its existence and its domination be ascribed? In this case, as in others, the cause will be found in the comparative strength of the producing influence, concurring with the comparative weakness of the opposing and restraining influence.

The efficient causes — the causes of the prohibition — are —

I. Combined public exertions.

II. Secret or corrupt influence.

III. Non-existence of counter-efficient influence.

IV. Legislative blindness.

I. In proportion as an individual, engaged in any one branch of industry, sees or fears to see his performances outdone by any competitor, whether foreign or domestic, he is interested in putting a stop to such rival labour, if possible — or to lessen its produce as far as he is able. The individual feeling is necessarily communicated to any body of individuals in the same situation: their common bond of union against those who are prejudiced by the employment of these productions, is much stronger than the motives to rivalry against one another. Hence, to obtain benefit for themselves and each other, individually and collectively considered, at the expense of all but themselves, is of course at all times the wish, and, as far as any prospect of success presents itself, at all times the endeavour, of all persons so connected and so situated.

By combined public exertion, what is meant to be designated is neither more nor less than the aggregate of the exertions made by all such individuals as deem themselves likely to receive benefit in any shape from the prohibitory measure in question. The following are the principal circumstances on which the success of such exertion will naturally depend: —

1. The apparent, and thence the real number of the persons thus confederating, of whose individual interests the particular interest in question is composed.

2. The aggregate quantity of capital engaged in the particular interest in question.

3. The apparent, and thence the real magnitude of the loss that would be produced to that particular interest, for want of the prohibitory measure in question.

4. The facility which, by local neighbourhood or otherwise, they possess for combining their efforts, and for concerting measures for employing them with the greatest possible effect.

5. The ability with which such representations are framed, as are intended to convey their case to the cognizance of the constituted authorities, or others on whom they depend for the ultimate success of their exertions: ability accompanied by energy and clearness, in so far as correct conception would be favourable to their cause — with obscurity and confusion, in so far as correct conception would be unfavourable to their cause.

6. The useful extent given to the circulation of such their communications; which extent will have for its measure the difference between the whole number of the persons on whose cognizance of the matter the success of their exertions will have to depend, and the number of those by whom, in consequence of their receipt of these communications or otherwise, cognizance of the matter comes to be actually taken.

II. By secret influence, the idea intended to be conveyed is, that influence which on the occasion in question is applied to the one or the few on whose will the success of the exertion depends, by the one or the few who, by habitual intercourse, possess in relation to them more or less facility of access in private.

On the part of the individual in question, be he who he may, the quantity of time it is possible for him to apply to the business in question, be it what it may, is a limited quantity — a quantity which, with reference to that necessary for the reception of the whole body of information, is most commonly and most probably insufficient even when the faculties of the person in question are, in the highest degree possible, well adapted to the prompt and correct reception of it.

If in any instance it happens that a person who, by any consideration, be it what it may, stands engaged to give support to the measure, is in habits of adequate familiarity with those on whom the adoption of it depends, the consequent advantage possessed by the measure is great and manifest. An additional and extra quantity of the arbiter's time is thus applied to the subject, and applied on that side. The only portion of time habitually applied to the business of the office in question, taken in the aggregate, will be the only portion of time, a part of which can in general be allotted to the particular business in question, in the regular and established way. If, then, so it be, that amongst those who have habitual access to the official person, amongst his ordinary companions and intimates, should happen to be a person thus interested in the measure, a portion of the time allotted even for refreshment will in this particular instance be added to the time allotted to official business; and thus the force of that sympathy which is produced by social enjoyment of this sort is added to whatsoever force the case may afford on that side, in the shape of appropriate and substantial argument.

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Thus it is, that whatsoever of just representative fact and argument together is afforded by the measure in question, is capable of receiving, in one way or other, from secret influence, an incalculable degree of force.

The influence, let it be supposed, is in the case in question no other than that which may be deemed legitimate influence — influence of understanding on understanding — influence operating no otherwise than by the direct force of such facts and arguments as the case may furnish.

But by the same private opportunities through which, in conjunction with and addition to those of a public nature, facility is given to the application of this legitimate influence — by these same private opportunities, and by these alone, facility is also given to the application of sinister and corruptive influence: influence of will on will, applied in a pecuniary or other inviting shape to the official person's private interest.

III. In every such case of prohibition of one branch of industry for the encouragement of another — of prohibition, for example, of foreign produce for the encouragement of domestic analogous produce, — there are, as above, two distinct interests — interests opposed to each other: the interest of producers, the particular interest — the interest of consumers, the universal interest. Of these opposite interests, it is the lesser interest that always operates, as above, with peculiar force — with a force which is peculiar to every particular interest, as contradistinguished from and opposed to the greater, the universal interest. The individuals who compose the particular interest always are, or at least may be — and have to thank themselves and one another if they are not — a compact harmonizing body — a chain of iron: the individuals making the universal interest are on every such occasion an unorganized, uncombined body — a rope of sand. Of the partakers in the universal interest, the proportion of interest centred in one individual is too small to afford sufficient inducement to apply his exertions to the support of his trifling share in the common interest. Add to which the difficulty, the impossibility, of confederacy to any such extent as should enable the exertions of the confederates fairly to represent the amount of the general interest — that general interest embracing, with few exceptions, the whole mass of society. In a less degree, the same observations apply to the case of the producers of the commodities with which, antecedently to the prohibition, the now prohibited goods were purchased.

Much greater, however, is the advantage which the lesser sinister interest possesses over the greater common interest, as far as secret influence is concerned.

Of the two modes of secret influence, that which is exercised by understanding on understanding, comes in only in aid of the legitimate influence of appropriate facts and arguments: the demand for it is, therefore, not altogether exclusive. But in so far as that influence is exercised only on one side — in so much as that influence is misdirected, by the combined means of persuasion employed by the confederated few who compose the particular interest, against the diffused means of persuasion possessed by the unrepresented or imperfectly represented many, who compose the general interest, — in so far it is clearly pernicious.

But it is the exclusively-possessed attribute of a particular interest, at once to require and to create facilities for the supply of sinister and corruptive influence. The universal interest — the people at large — the subject many — never see, never can see, engaged in support of their interest — of that universal interest — a friend and advocate established in habits of intimacy with the official person, at the table of the official person; an intimate whom, by any favour in their power to bestow, they can induce to engage that same official person to support, by his individual exertions, that general interest against which the particular interest is waging war. For any purpose of corrupt influence, the official person himself and his table-companion are equally inaccessible to the general interest: the particular interest can come at both.

The consequence is, that whenever the general interest is sacrificed to the particular interest, a probability has place that the sacrifice has been obtained, not from the sincerity of honest delusion, but from the perversity of corrupt intention. This probability will be more or less, according to the more or less obvious impolicy of the measure, and to the facilities afforded, under the circumstances of the case, for the introduction of corruptive influence among those who occupy the high places of authority.

These causes, in fact, apply to the whole field of government; they account for the universal domination of the interests of the few over the interests of the many; they account for the largest portion of the aggregate mass of misrule.

But it may be retorted, this prevalence of particular over universal interest being, according to yourself, so general, the necessary consequence is, that no ultimate mischief ensues — everything is as it should be; for what is the universal interest but the aggregate of all particular interests?

This is evading, not meeting the argument. The desire indeed exists universally to give prevalence each man to his own particular interest; but not the faculty. The wish is everywhere — the power not so.

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Even of the manufacturing interests, it is not every class that has the power to associate and combine in support of the common interest of the class: that power only exists where similar manufactures are concentrated in small districts — where means of intercourse are frequent and easy — or where large numbers are employed by large capital lodged in the hand of a single individual, or of a single partnership. What facilities of general association or combination are possessed by individuals employed as general shopkeepers, bakers, butchers, tailors, shoemakers, farmers, carpenters, bricklayers, masons, &c.? None whatsoever.

Had every one individual in every one of these classes his vote in the business, all would indeed be as it should be: the sum of all the several distinguishable interests being thus framed and ascertained, would constitute the universal interest; in a word, the principle of universal suffrage would be applied.

Very different, however, is the state of things. Separate and particular interests start up, solicit and obtain protection, by the exercise of the influence referred to, to the danger and the detriment of the common prosperity. Of these the aggregate body of the influential interest is mainly composed. The concentration of immense capital in single hands, great facilities for combination, and sometimes an union of both, furnish a power of evil which is but too commonly allowed to immolate the general good. Against its gigantic influence, appeal would seem in vain. A number of small fraternities exist, who, if they were able to unite, might maintain themselves against one large one equal to them all; but as it is, standing up separately, separately they are opposed and crushed by the overwhelming influence, one by one.

Of the baneful effects produced by the concentrated efforts of a coalition of those individual interests which form the particular interest, as opposed to the general national interest, the Spanish prohibitory decree is a remarkable illustration. In this case, a few clamorous manufacturers and a few short-sighted self-named patriots united their forces, and besieged the Cortes with their representations. Compared to the amount of counter-interest, they were, as we have shown, as one to a hundred; but their forces were organized — their strength was consolidated. Where, then, were the representatives of the thousand, when the representatives of the ten were drawn out in battle array? Nowhere! So the law was passed: it was declared to be eminently popular; for the people who had petitioned, had petitioned in its favour: the truth being that the people, the immense majority of the people, had not petitioned at all; nobody was sufficiently interested. The law was passed; and now it is that the *public* injury begins to be felt, and now it is that the *public* voice begins to be heard. Spain has had but too long and too calamitous an experience of the injury done by that ever-busy meddling with the freedom of commerce which has for ages distinguished her short-sighted legislators, and which, in spite of natural advantages almost peculiar to herself, has eternally involved her in financial difficulties, distress, and poverty.

In England, all other particular interests are overborne and crushed by one great particular interest, named in the aggregate the agricultural interest. By a system of prohibition, foreign grain is excluded, with the avowed intent of making home-produced grain dearer than it would be otherwise — dearer to the whole population in the character of consumers and customers; and for the avowed purpose of securing to a particular class of persons a pecuniary advantage, at the expense of the whole population of the country.*

But the class of persons meant to be favoured, and actually favoured, by this undue advantage, are not any class of persons employed in any beneficial operation; but a class of persons who, without any labour of their own, derive from the labours of others a share of the means of enjoyment much greater than is possessed by any who employ their labour in the purchase of it. They are land proprietors, deriving their means of en-

* As a guide to estimate the consumption of foreign corn in Great Britain, the imports and exports for 21 successive years will be found in Tables D and E. They were published in 1813 by order of the House of Commons. By these it would appear that the pro-rata annual importation of wheat, taking this period into account, was about 450,000 quarters; and of flour, 200,000 cwts.; which, taken in round numbers at 50,000 quarters, makes 500,000 quarters in all. The pro-rata exports of the same period were about 43,000 quarters of wheat, and 100,000 cwts. of flour; say in all, 68,000 quarters of wheat; so that the net amount of foreign grain consumed in Great Britain will have been about 430,000 quarters yearly. Calculating the annual consumption of the country at 11 millions of quarters, the proportion employed of foreign to home-produced wheat will be about a twenty-sixth part. Dr. Adam Smith gives no data, but assumes the proportion in his time to have been as 1 to 570. Can such a change have really taken place?

In Spain, one-thirtieth part of the whole consumption is the general amount of importation. The estimated quantity employed yearly is said to be 60 million fanegas: the average yearly importation is 2 million fanegas (Antillon.)

These calculations can be only deemed approximative, not correct. In great towns, one quarter of wheat *per annum* for every individual is made out to be the general consumption. London consumes about 19,000 sacks of flour weekly; but this proportion is necessarily much too high with a reference to great Britain, in many parts of which the majority of the population employ no wheat at all.

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joyment or of luxury from the rent of land cultivated by the industrious: they are, in a word, not labourers, but idlers — not the many, but the few. While, for the support of war, paper-money was issued in excess, they let their lands at rates which, if neither too high nor too low at that time, taking into account the then value of money, would necessarily be too high when, by the diminution of the issue of that money, the difficulty of obtaining it was increased, and its value increased from the same cause: and this evil is accumulating, if the amount of taxes paid by the occupier of the land, on account of the land, or on any other account, increases also.

In this case — the case as it now exists — the difficulty of coming to a right judgment, of feeling that we have come to a right judgment, is great indeed; so great, that in the determination of many an individual, in whose breast particular interest is in operation, regard for the universal interest might and would have been productive of the very line of conduct which has been determined by the more potent force of individual interest.

But of this difficulty, wherever it exists, what should be the consequence? Not that prohibition should be resorted to, but that it should be abstained from. So long as nothing is done in relation to the object by government, whatever happens amiss is the result of the nation's will, and government is not chargeable with it. But when, and if, and where, government takes upon itself to interfere and apply to the subject its coercive power, whatever mischief results from the exercise of that coercive power, is the result of the agency of government, and the rulers stand chargeable with it.

Whichever course is taken, — action or inaction — interference or non-interference — liberty, or coercion in the shape of prohibition, — distress to a vast extent — distress verging on ruin — distress on one side or the other — must be the inevitable consequence. If the importation of foreign grain be left free, ruin is entailed on the farmer, distress on the landlords: prohibit foreign grain, and ruin falls not only upon the manufacturer, but upon the labouring class; that is, the great majority even of agriculturists. Such is our miserable situation. Its cause is excessive taxation — excessive taxation, the consequence of unjust war; — unjust war, the fruits of the determination formed by the ruling few to keep the subject many in a state of ignorance and error — in a state of dependence something beneath the maximum of degradation and oppression. In England, the primal and all-sufficient cause of misgovernment, and consequent misery, the corruption of the system of national representation; in every other country, the want of a system of adequate national representation, or rather the want of a representative democracy, in place of a more or less mitigated despotism: the want of the only form of government in which the greatest happiness of the greatest number is the end in view.

The mischiefs, then, of this system of partial encouragement being in all its shapes so vast, so incalculable, and their sum so plainly predominant over the sum of good, to whom or to what shall we attribute the existence, the prevalence of such a system?

To the general causes of misrule — to the want of the necessary elements of good government — to a deficiency of appropriate probity, or intellectual aptitude, or active talent: in other words, to a want of honesty, or ability, or industry.

One cause bearing upon the question of appropriate intellectual aptitude or ability, and likely to mislead it, is this: — The good which constitutes the ground of the prohibitory measure, the reason that operates in favour of it, is comparatively prominent — the evil not equally so; its place is comparatively in the back ground. Hence it is, as in too many other instances, — a good, however small, is by its vicinity to the eye enabled to eclipse and conceal the evil, however large.

When, reckoning from the day on which a measure has received the force of law, a certain period of time has elapsed, custom covers it with its mantle; and, regarding it as an unauthorized act of daring to look into the nature of the measure, men inquire no further than into the existence of the law; habit gives it a fixed authority: and thus it is that, in every country, worship is bestowed on laws and institutions vying in absurdity with any scheme of extravagance which the imagination of man could produce.

Thus things go on — evil is piled upon evil — till at length the burthen of evil is absolutely intolerable. Then it is that men's eyes are opened, and a desire to retrace their erroneous steps is conceived. But no sooner has the legislator turned round, than he finds the way barred against him by a host of difficulties. And thus, when nothing would have been easier at first than to prevent the disease — that is, to forbear creating it — the cure becomes ineligible, insufferable, not to say impossible; and error and folly become immoveable and immortal.

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TABLE A.

VALUE of BRITISH PRODUCE and MANUFACTURES exported from Great Britain to Spain in the years 1817, 1818, and 1819.

	1817.	1818.	1819.
Brass and Copper Manufactures,	£10,170	£7,642	£9,077
Cotton Manufactures,	42,292	25,718	65,056
Glass and Earthenware,	14,843	15,125	12,200
Iron, Steel, and Hardwares,	52,893	58,925	61,618
Linen Manufactures,	116,267	100,622	95,623
Silk Manufactures,	74,813	68,790	62,926
Tin and Pewter Wares,	20,059	12,489	13,992
Woollen Goods,	186,849	164,479	124,517
Sundries, consisting principally of Fish and other Provisions, Apparel, Plate, Jewellery, and Household Furniture; Musical and Mathematical Instruments, Lead, Copperas, and Painters' Colours,	70,635	65,055	64,269
Total,	£588,821	£518,845	£509,278

TABLE B.

An ACCOUNT of the QUANTITY of the principal Articles imported into Great Britain from Spain in the years 1817, 1818, and 1819.

	1817.	1818.	1819.
Almonds of all sorts, cwts. qrs. lbs.	1,534 : 3 : 6	3,086 : 3 : 25	2,384 : 2 : 10
Barilla, cwts. qrs. lbs.	6,437 : 0 : 22	16,027 : 2 : 21	14,505 : 3 : 21
Cochineal, lbs.	118,105	50,104	37,217
Cork, cwts. qrs. lbs.	9,973 : 2 : 10	13,896 : 2 : 4	16,725 : 2 : 22
Cortex Peruvianus, lbs.	32,338	30,282	4,544
Jalap, lbs.	54,607	29,946	98,863
Indigo, lbs.	82,189	85,265	3
Lead Black, cwts. qrs. lbs.	2,019 : 2 : 16	4,221 : 0 : 23	1,611 : 2 : 7
Lemons and Oranges, number	6,902,775	7,443,475	12,066,880
Nuts, small, bushels,	66,360¼	87,922	50,743¼
Quicksilver, lbs.	698,830	1,156,783	449,965
Raisins, cwts. qrs. lbs.	42,536 : 1 : 21	69,232 : 1 : 3	61,815 : 0 : 25
Shumac, cwts. qrs. lbs.	5,310 : 3 : 10	7,816 : 2 : 26	2,894 : 0 : 27
Wine, tuns, hhds. gals.	4,246 : 0 : 11⅔	6,805 : 2 : 13	4,115 : 3 : 36⅔
Wool, sheeps', lbs.	6,282,033	8,760,627	5,528,966

TABLE C.

An approximative ESTIMATE of the VALUE of the principal Articles of Merchandise imported into Great Britain from Spain in the years 1817, 1818, and 1819.

	1817.	1818.	1819.
Almonds of all sorts,	£6,140	£12,348	£9,538
Barilla,	8,046	20,035	21,881
Cochineal,	147,631	62,630	46,522
Cork,	24,932	34,736	41,815
Cortex Peruvianus,	3,235	3,028	755
Jalap,	2,785	1,498	4,944
Indigo,	24,657	25,579	1
Black Lead,	3,026	10,865	2,416
Lemons and Oranges,	8,054	8,685	14,079
Nuts, small,	53,300	73,263	42,285
Quicksilver,	52,412	86,759	58,497
* Shumac,	5,315	7,816	2,898
Wine,	582,100	544,450	569,238
Wool, Sheeps',	785,254	1,095,078	691,120
* Raisins,	108,804	103,848	92,723
Total,	£1,815,691	£2,090,620	£1,598,712

The above Table is not official, and the value probably not very accurately calculated.

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TABLE D.

ACCOUNT of FOREIGN GRAIN, &c. imported into Great Britain from 1792 to 1812 inclusive.

Years.	*Barley.*	*Barley Meal.*	*Beans.*	*Indian Corn.*	*Indian Meal.*	*Malt.*	*Oats.*	*Oatmeal.*	*Pease.*	*Rye.*	*Rye Meal.*	*Wheat.*	*Wheat Flour.*
	Quarters.	Cwts.	Quarters.	Quarters.	Cwts.	Quarters.	Quarters.	Cwts.	Quarters.	Quarters.	Cwts.	Quarters.	Cwts.
1792	113,080	....	36,605	5,677	....	....	450,976	....	4,793	12,536	....	18,931	7,757
1793	142,884	....	26,408	2	....	....	429,994	....	18,553	55,564	....	415,376	211,588
1794	111,370	....	88,396	1,600	....	....	484,370	....	40,368	24,058	3,705	316,086	9,308
1795	18,070	....	13,823	20,586	....	....	105,168	8	20,263	11,507	37,595	274,522	86,726
1796	40,033	....	34,327	22,410	20,651	....	459,932	15	32,711	160,583	11,611	820,381	205,855
1797	51,930	....	16,807	107	14	....	274,490	2	17,818	8,258	....	420,414	2,769
1798	66,705	....	8,540	21	....	....	411,456	....	21,632	6,925	....	378,740	1,734
1799	19,387	....	3,237	2	....	....	170,233	....	8,750	22,051	2,650	430,274	61,584
1800	130,898	....	15,796	8,436	9,471	....	542,603	7	26,796	138,713	22,025	1,174,523	312,367
1801	113,966	....	16,246	44,472	113,141	....	582,628	63	44,218	99,847	177,494	1,186,237	833,016
1802	8,136	....	4,138	737	15,513	....	241,848	....	10,558	14,889	1,162	470,698	236,061
1803	1,148	....	85	669	146	....	254,799	14	23,381	3,347	....	224,055	309,409
1804	9,074	2	8,868	242	8	....	500,369	2	18,570	2,438	....	386,194	17,060
1805	27,645	....	8,727	16	27	....	275,105	....	8,583	24,032	....	821,164	54,539
1806	2,058	....	1,045	108	18	....	183,428	....	171	683	2	136,763	248,907
1807	3,043	....	9,997	1,062	4	....	420,032	....	4,680	7,309	....	215,776	504,209
1808	4,601	216	8,674	4,307	5	1,228	34,630	73	12,807	4,724	3	33,780	19,642
1809	13,341	31	27,297	1,262	....	533	296,911	861	33,071	13,047	541	245,774	497,314
1810	17,953	153	11,685	36	3	893	115,916	3	12,053	90,116	3,206	1,304,577	472,633
1811	39,900	778	357	13	12	1,493	11,446	410	4,994	27,765	166	179,645	31,215
1812	40,375	103	16	17	....	356	14,826	445	661	71,771	3,296	115,811	49,194

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TABLE E.

An Account of the Quantity of Corn and Grain of all sorts, Meal, Flour, and Rice, exported from Great Britain from 1792 to 1812 inclusive: distinguishing the Quantity of each Year; the Price of the Year being the real Value, and the total Export of each Year in Value.

Years.	*Barley.*	*Barley Meal.*	*Beans.*	*Indian Corn.*	*Indian Meal.*	*Malt.*	*Oats.*	*Oat-meal.*	*Pease.*	*Rye.*	*Rye Meal.*	*Wheat.*	*Wheat Flour.*	*Total Quantities exported.*			*Total Value at the average market prices.*
														Corn & Grain.	*Meal & Flour.*	*Rice.*	
	Quarters.	Cwts.	Quarters.	Qrs.	Cwts.	Quarters.	Quarters.	Cwts.	Qrs.	Quarters.	Cwts.	Quarters.	Cwts.	Quarters.	Cwts.	Cwts.	
1792	29,110	....	11,636	....	....	20,021	23,940	2,195	5,629	16,151	.....	250,982	172,534	357,469	174,729	174,959	£1,063,753
1793	1,529	....	9,771	....	....	1,993	16,237	3,728	4,582	512	.....	44,866	112,012	79,490	115,740	96,172	361,053
1794	2,964	....	7,520	1,448	....	6,473	13,388	4,196	3,280	1,919	.....	116,273	135,713	153,265	139,909	79,336	579,487
1795	1,789	....	3,235	465	....	4,627	5,420	2,274	1,315	115	603	677	63,567	17,643	66,444	25,809	149,393
1796	7,204	....	8,613	3,289	....	5,929	10,072	3,093	2,112	122	.....	677	84,008	38,018	87,101	76,692	266,171
1797	5,253	....	8,486	6,419	5,711	7,870	18,869	4,502	2,835	108	1,436	23,076	110,071	72,916	121,720	69,730	310,909
1798	2,856	....	16,092	580	23	12,220	23,600	5,748	3,415	680	.....	22,138	131,757	81,581	137,528	73,532	344,340
1799	24,901	....	9,508	500	....	16,485	17,633	6,590	2,311	40	396	16,960	78,409	88,338	85,395	44,626	365,607
1800	3,393	....	7,146	....	....	2,415	9,505	3,951	1,822	37	1,448	7,866	49,515	32,184	54,914	6,422	234,578
1801	1,614	....	5,476	378	1,988	2,111	12,278	4,774	1,508	25	6,926	5,227	81,126	28,617	94,814	20,947	297,094
1802	4,727	....	6,792	1,328	400	3,148	15,482	3,300	2,370	6,484	.....	104,414	157,113	144,745	160,813	210,899	807,060
1803	32,756	....	4,885	....	....	11,032	14,047	3,907	2,626	1,030	.....	47,630	101,326	114,006	105,233	57,163	393,560
1804	115,102	2,125	5,918	58	....	12,747	17,168	3,098	2,999	3,798	.....	30,229	114,956	188,019	120,179	50,292	536,092
1805	6,555	....	5,490	....	....	6,902	14,000	3,720	3,886	3,808	.....	54,243	82,994	94,884	86,714	41,734	505,102
1806	16,820	....	6,734	....	....	6,805	27,764	12,938	4,682	4,020	.....	4,716	86,973	71,541	99,911	49,371	337,222
1807	6,360	....	7,374	....	....	7,202	22,702	13,619	2,325	956	.....	2,634	76,058	49,553	89,677	30,810	259,892
1808	2,936	1,207	6,519	210	....	7,493	21,620	9,480	3,556	3,907	300	8,495	241,752	54,736	252,739	15,359	484,231
1809	5,061	30	2,827	....	....	5,830	16,085	7,576	2,610	708	13	4,866	92,442	37,987	100,061	28,738	298,699
1810	11,348	83	2,804	....	....	8,218	19,199	9,651	3,059	8,154	2,944	61,488	50,040	114,270	62,718	139,054	716,923
1811	53,246	156	2,175	....	....	10,982	40,047	7,260	3,603	35,235	1,091	73,249	85,806	218,537	94,313	83,698	893,469
1812	53,205	100	1,956	....	....	9,562	21,398	14,229	2,918	21,400	1,548	27,091	67,318	137,530	83,195	32,141	760,130

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A PLAN

FOR SAVING ALL TROUBLE AND EXPENSE

IN

THE TRANSFER OF STOCK,

AND

FOR ENABLING THE PROPRIETORS TO RECEIVE THEIR DIVIDENDS
WITHOUT POWERS OF ATTORNEY, OR ATTENDANCE
AT THE BANK OF ENGLAND,

BY THE

CONVERSION OF STOCK INTO NOTE ANNUITIES.

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* The papers from which the following work is edited, were written by Bentham in 1800,— and the principal part of the first four Chapters then printed: the Editor has been able to discover only a single copy of those Chapters.

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CIRCULATING ANNUITIES, &c.*

INTRODUCTION.

THE *main principle* of the proposed measure consists in the opening the market for government annuities, on terms of profit to government — viz. at a *reduced rate of interest* to a mass of money, which, by existing circumstances, is either excluded from the faculty of yielding interest to the owners altogether, or, in the hands of bankers or otherwise, they are obliged to accept, on inferior security, a rate of interest inferior, all things considered, to that which, with a very considerable degree of profit, might be allowed by government. The annuities, thus created, to be charged upon the existing fund; and the money thus raised to be employed, as it comes in, in the redemption of debt, and thence in exoneration of that fund. The result and benefit of the measure, taking it on the *smallest* scale, will, besides the above profit to government, consist in the affording to the least opulent and most numerous class of individuals (friendly societies included) — in a word, to the great bulk of the community — the means of placing out *small hoards*, however minute, with a degree of advantage unattainable by any other means,† and this, too, even at *compound interest* — a mode of accumulation which, familiar as it is in *name*, is not in *effect* capable of being realized by any other means in favour of individuals, though so happily brought to bear in favour of the *public* in the instance of the *sinking funds*;‡—not to speak of the collateral advantage obtained, by creating on the part of the *lower* orders, in respect of the proposed new species of property, a fresh and more palpable interest in the support of that government, on the tranquillity of which the existence of such their property will depend.*

On the *larger* scale upon which it may be expected to expand itself, the measure, after accelerating the *otherwise* rapid ascent of government annuities to the par price,† and clearing away the 4 and 5 per cents.,‡ would afford the means of bringing the further reduction of the rate of interest on those annuities to its *maximum* in point of effect, *rate* of reduction, and *rapidity*, taken together;‖ *reduction* of *interest* accelerating, too, in this way, *redemption* of *principal*, instead of taking place of it and retarding it, as on the plan pursued in Mr. *Pelham's* days.§

Other paper currencies have been either (like the French *assignats* and *mandats*, &c.) engagements for money in *unlimited quantity*, and without *funds* for performance; or promises of *minute* portions of a species of property (for example *lands* and *houses*) incapable of being reduced into such portions; or, like some of the American currencies, promises of metallic money, payable at a period altogether *indefinite*, dating, for instance, from a fixed day posterior to the conclusion of a war.

By the *proposed* currency, nothing is engaged for but to pay such *monies* as there are already funds for paying, and at such *times* at which there are funds for paying them; and this in a *quantity* which, by the terms of the engagement, has its *ne plus ultra*, and can in no case add to the existing amount of the engagements it finds charged upon those funds: reimbursing immediately, and with profit, the fund on which it draws, it stands distinguished by this prominent feature, from all currencies as yet exemplified.¶

The losses, experienced or apprehended, from rash or penniless issuers of promissory notes, gave birth to the restrictions imposed on issues of sums below a certain magnitude. But this reason has no application to notes expressive of engagements, of the sort proposed, on the part of government. Issuing from such a *source*, the sums of the notes cannot be too minute: incapable of increasing, certain even of diminishing, the amount of the engagements they find existing, the influx of them cannot be too great. The *smallness* of the *notes* adds to the *multitude* of the *customers*; the *multitude* of the notes *divides* the mass of the engagements, and does not *add* to it. Confined within those bounds, the magnitude

* When the pen was first set to work upon these pages, there was generally understood to be a deficiency of paper money. At present, there is at least no such deficiency: — a superabundance seems much more probable. At the time of the want, the proposed paper presented itself as a remedy against the want: now, at the time of the superabundance, it presents itself as a safeguard against the sort of mischief — past, present, and impending — which may be traced to the superabundance.

† See Chap. XI.

‡ On the first institution of the sinking fund, either designedly or undesignedly, the facts seem to have been forgotten, that all the accumulations at compound interest would arise from taxes; as also that to borrow with one hand, and at the same time to redeem with the other, must be attended with loss. The loss occasioned by this latter practice has been ably exhibited in Dr. Hamilton's Work on the national debt.—*Ed.*

* See Chap. XII. † See Chap. V. § 1.
‡ See Chap. V. § 2. ‖ See Chap. V. §§ 3. 4, & 5.
§ See Chap. X. ¶ See Chaps. I. III. & IV.

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of the emission adds not only to the *profit* of the measure, but to the *security* of the fund.

A species of notes was *not long ago* proposed, whereby government annuities were to stand mortgaged, and *yet* (it was supposed) without diminution of their value: — and which were expected to pass, and be paid for *as if* they had engaged for the payment of so much money, though without binding any assignable individual to the payment of it. But the *now* proposed plan engages for no payment for which adequate funds are not *already* in existence; nor without imposing on a determinate individual the obligation of making the payment out of those funds; nor yet *burthens* those funds, without immediately *disburthening* them to a *superior* amount.

By taking from the load of government annuities which is found pressing on the market, the *sale of the land tax* for stock has bettered the terms of all succeeding loans. On the measure now proposed, hangs a profit the same in kind, superior in degree.*

Reducing the mass of the national debt, the operation on the land tax *takes nothing* from the mass of national capital; — the proposed measure *adds* to it. The former borrows from capital, but refunds immediately, with 10 per cent. to boot; the latter adds still more to capital, and that as speedily, without having borrowed anything.†

Every penny of the national debt redeemed, if redeemed with money not borrowed from capital, is so much added (it will be shown) to that part of the national capital which does not consist of money. The addition made by the sinking fund to the mass of national capital, is little inferior to the defalcation it makes from the mass of national debt. So many years as, by the aid of the proposed measure, may come to be struck off from the period which would otherwise have been occupied in the redemption of the debt, so many years' interest, upon the sum equal to the greatest amount of that debt, will therefore have been added, and that at *compound interest*, to the amount of national capital, by the operation of the proposed measure.

A sort of discovery in political economy has been made of late (for such it seems to be,) that commercial security is not less liable to suffer by *deficiency* than by *excess*, in respect of the customary quantity of paper in circulation. Among the advantages attendant on the proposed paper, will be found that of affording a remedy, and that of the preventive kind, against the shocks which commercial security might otherwise have to sustain from such deficiency or excess.‡

Shocks of that kind are not, however, the only mischief to which the community stands exposed, not only by the *abuse*, but even by the *use*, of every species of circulating paper as yet known. *Rise of prices* is another mischief, less heeded, but not less real. By gold and silver money to the same amount, the same mischief would (it is true) be produced, and in the same degree; but the magnitude of the mischief is in proportion to the *suddenness* of the addition, not to the *absolute quantum* of it; and, in the shape of cash, the influx is not susceptible of any such suddenness as in the shape of paper. To be capable of opposing an effectual barrier to a torrent of this sort, will be found to be among the properties of the proposed paper. To point out measures adequate to that end, is among the tasks undertaken in the plan of the proposed measure.‖

The extent of the proposed emission being given, neither the *efficiency* nor the *utility* of the measure will be found open to dispute: the only room for *uncertainty* regards the *extent*. As to that point, cases are collected, presumptions offered: but nothing short of experience can determine.

CHAPTER I.

PLAN FOR THE CREATION, EMISSION, PAYMENT, AND EVENTUAL EXTENSION, OF A PROPOSED NEW SPECIES OF GOVERNMENT PAPER, UNDER THE NAME OF ANNUITY NOTES.

§ 1. *Creation, Emission, and Payment.*

ART. 1. That there be issued from his Majesty's *exchequer*, in whatever *quantity* [1.] it shall be applied for by purchasers, on the *conditions* hereinafter mentioned, through the medium of such *local* or *sub-offices* as are hereinafter mentioned, and the *interest* or *dividends* paid in such manner as is also hereinafter mentioned, a competent number of *transferable promissory notes*, to be termed ANNUITY NOTES; importing, each of them, the grant of a *perpetual redeemable* annuity, payable to the purchaser or other *holder* of the note, in consideration of the *principal* sum, on the repayment of which such annuity is made redeemable, and which accordingly constitutes the denominative *value* or *principal* of such note; such interest to be paid half-yearly, [2.] immediately after the expiration of each half-year.

* See Chap. V. § 6. † See Chap. VI.
‡ See Chap. VII.

‖ See Chapters VIII. & IX.

[1.] Art. 1. *(In whatever quantity.)* The money thus raised being appropriated to the redemption of stock annuities, when that redemption is completed, the emission will cease, by articles 6 and 20; and, subject to that limitation, the more copious the emission, the more profitable the measure.

As to the mode of limiting, in cases of necessity, the portion producing the effect of money in the circulation, see note to Art. 16, and Ch. IX. *Rise of Prices.*

[2.] Art. 1. *(Half-yearly.)* Yearly would be

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Art. 2. That the interest be in such sums as to be capable of being computed *daily*, as in the case of *exchequer bills*. That the daily interest allowed upon the *standard note* (so termed with reference to any smaller or larger notes that may come eventually to be added to the circulation upon the same principle) be a *farthing;* [3] — and that the principal or denominative value of such standard note be £12 : 16s; and that the interest, in order to afford a profit to government, be inferior to the current rate borne by government annuities at the opening of the issue, say £3 per cent. *nearly* [4] — a small sum being added to the principal sum, corresponding precisely to that rate, for the sake of making the sums the more *even*, especially at the bottom of the scale. [5]

Art. 3. That each note contain, on the face or back of it, a *table*, whereby the value of it, as *increased* by daily interest, may be seen for every day in the year, by inspection, without calculation; also a table, whereby in case of forbearance [6] to receive the interest, the value of a note of that magnitude, as increased by daily interest, added to yearly interest so forborne to be received, may be seen, for any number of years, by a single addition; together with an indication, by means of which it may be seen (also by simple inspection) for what number of years, if any, the interest on the particular note in question continues unreceived.

Art. 4. That the interest on each note, whenever issued, commence on the first day of each year of our Lord; and that, on notes issued on the several days after such first day, the interest to the day of issue be *added* to the purchase money. [7]

Art. 5. That no such annuities be ever issued at a less price, [8] (*i. e.* so as to bear a

more simple (as may be seen in the form exhibited for that purpose in Table II.) as well as more profitable to government; but being unconformable to the established usage, it would be apt to strike the customer as a great drawback from the value, stand in the way of the profit expected as under mentioned, by forbearance on the part of note-holders to receive the interest (see Ch. V.) and would be in a manner destructive of the advantage obtainable in the way of *compound* interest by persons keeping the paper in hand, as stock is kept in hand, for that purpose.

[3] Art. 2. (*A farthing.*) By taking, for the standard note, a principal sum, having for the amount of its *daily* interest, at the proposed rate of interest, an *even* sum (*i. e.* a sum having an existing piece of coined money or number of pieces of coined money, corresponding to it,) the *multiples* of this *standard* note will in like manner have *even* sums for the respective amounts of their daily interest, and their *aliquot parts* will have for their amounts of interest, sums capable, when put together, of being made up into even sums.

Here, as in Exchequer bills, the interest is computed daily, that each note may receive from each day a *determinate* addition to its value, and may pass accordingly in circulation.

The smallest of all notes possessing this property is taken for the standard note, because the smaller a note, the greater the number of persons that are capable of becoming customers for it.[a]

The standard note being scarcely small enough in this view, it were better, perhaps, that not only the *half*, but the *quarter* of it should be issued at the same time.

The larger notes will serve to protect the smaller ones from the contempt which might otherwise attach upon them, by reason of the smallness of the daily, and even weekly, amount of interest.

[4] Art. 2. (3 *per cent.*) For the reason why no higher rate of interest could be allowed with profit on a series of notes carrying daily interest, nor any lower above $2\frac{3}{4}$ per cent., which in the first instance might be too low, see *Currency Table*, note *m*.

[5] Art. 2. (*Bottom of the scale.*) See *Currency Table.*

[a] Had the *bank* been sufficiently aware of this, would they have waited, till compelled by necessity, before they issued their £2 and £1 notes?

[6] Art. 2. (*Forbearance.*) See *Currency Table.* On a note which passes on from hand to hand, any number of years may elapse before the interest on it is received from government; since the interest may be received by each holder with less trouble from the individual to whom he passes it. Hence one source of the profit to government (see Chap. V.) It is only where a man *keeps* a note in his hands as a source of income, that the interest of it will be applied for at the offices. In fact, it is only in the case where a man means to hoard up at compound interest, that it will be necessary for him to receive the interest upon his paper from government; inasmuch as, without trenching upon the principal, he may spend the income from his notes, by passing off a *proportion* to that amount, keeping in hand the rest.

[7] Art. 4. (*Interest added.*) Upon all notes of the same denomination, interest must commence upon the same day (say the first day of the half year,) otherwise 365 notes of the same denomination might be of so many different values: and if interest is to commence on that day, a purchaser in the way of issue must pay for the note accordingly; otherwise customers would be apt to delay taking out their notes till the last moment; keeping their money in their pockets, or employing it in other ways in the meantime; and then they would pour in, all at once, in crowds too great to be served.

[8] Art. 5. (*At a less price.*) Want of security against depreciation has hitherto been the bane of government currencies, and is *among* the reasons why banker's paper, yielding a low interest, is taken, notwithstanding the existence of a government currency (exchequer bills) yielding a higher interest. Government must, it is true, have the money it wants upon any terms; but so long as it reserves to itself the faculty of selling any *one* species of annuities (*ex. gr.* the existing stock annuities) in a quantity commensurate to the amount of the money it wants, at the *times* price, it may refuse to sell any other (such as the proposed note annuities) under a *fixed* price. As anybody may have as much of these annuities as he will at par, nobody will ever give more; and as no more can ever be sold than is applied for,

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greater rate of *interest*) than the *first* issue, and accordingly, that as often as any money comes to be raised at a higher rate of interest by *perpetual* annuities, it shall be by the creation of *stock annuities*, &c. as at present; and that a clause to this effect be a *fundamental* article in the contract made with the purchasers on the part of government, and be *inserted* accordingly in the tenor of the note.

Art. 6. That, at that price, the issue be kept open, so long as any of the redeemable stock annuities existing at the commencement of the issue, continue unredeemed, and no longer; and that this be *another* such fundamental article. (See Art. 20.)

Art. 7. That no such *note* annuity be paid off till the whole mass of *stock* annuities existing at the commencement of the issue, or created subsequently, shall have been paid off, [9] and that this be another such article.

Art. 8. That for every £3 a-year annuity thus created, an equal portion of stock annuities be forthwith bought in and extinguished within a time to be limited; and that this be another such article.

Art. 9. That the *profit* resulting from the difference between the price at which each such annuity shall have been sold, and the price at which an equal mass of annuity shall have been bought in, be carried to the sinking fund, subject to such other dispositions, if any, as from time to time may be thought fit to be made by parliament with respect to a predetermined portion or portions of it.

Art. 10. That, at the outset, no other note be issued than the *standard* note (£12 : 16s.) with the *half*, or with the half and quarter of it.

Art. 11. That, by degrees, the series of notes be extended *downwards*, each successive note being the half of the one immediately preceding it (with or without the *omission* of any term or terms in such descending series) until it has descended to the lowest piece of silver coin in common currency, viz. a sixpence; and that it be then considered whether to give it a further extension downwards, viz. to the level of the copper coinage. [10]

Art. 12. That the notes having for their respective values, sums not exceeding the largest silver coin in use (viz. 5s.) be distinguished by the appellation of *silver notes*, all above being for the same purpose termed *gold notes;* and that to facilitate the discrimination, a corresponding peculiarity of colour be given to the *gold notes*.

Art. 13. That, moreover, as convenience may suggest, the series be extended to a correspondent length, or otherwise *upwards;* [11]

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and the demand for these annuities will increase as the mass of existing stock annuities comes to be redeemed, by the money raised by the sale of these note annuities, backed by the money from so many other funds, no man need ever part with them at a less price; since, by taking an annuity note in the way of circulation, a man will save the trouble of going to the office for it, and taking it out in the way of issue, not to speak of the small fee which it may be necessary to require. (See Art 17, and Chap. IV.)

[9] Art. 7. (*Paid off.*) By an assurance to this effect, nothing can ever be lost to government; because, so far from profit, while an annuity to the amount of £3 a-year can be paid off by £100, an annuity to no more than £2 : 19s. a-year can never be paid off but to a loss: and it will be no small recommendation, especially when, by the operation (as will be seen) of this measure, the complete redemption of the existing mass of annuities has been brought to view. (See Chap. V. § 2.)

[10] Art. 11. This, if not stopped by the expense (which increases with the number and not with the value of the notes,) would be attended with several advantages.

1. The copper notes, the receiving of interest upon them being attended with a degree of trouble, in proportion to the number requisite to produce a principal yielding a mass of interest worth regarding, would stay in the circulation, and by lessening *pro tanto* the amount of the supply capable of meeting the demands of those who want their paper to hoard for the purpose of income, it would increase the scarcity of the paper of the first issue, and render customers the more willing to accept a second issue at a reduced rate of interest.

2. The profit by *forbearance to receive the interest* (see Chap. V.) would take place upon the whole of this branch of the currency.

3. The proposed paper, being so effectually guarded (as will be seen) against forgery (see Explanations to the *Form of an Annuity Note*,) and the copper coinage so much exposed to that crime, notwithstanding all the exertions that have been made to rescue it, the saving to the public, especially to the inferior and more numerous classes, on this score, would be a matter of considerable and almost universal accommodation; — and,

4. The saving to government, by the diminution of the expense of renewing the copper and other coinage, would be proportionably considerable.

How far the expense would be capable of being paid for by the profit, would be learned by experience from the *silver notes*.

The minuteness of the small notes would be protected from contempt by their relation to the large ones; and to go in change for one another, they must, all of them (even *copper* not excepted,) bear an *interest*, and the same *rate of interest*.

A reason for making the extension *gradual*, may be to avoid perplexing the public mind with a multiplicity of notes of different values, before it has been familiarized with any of them. But, at the worst, the magnitudes would be little, if anything, more numerous than in the case of bank-notes.

[11] Art. 13. (*Upwards.*) The time for issuing *large* notes, *i. e.* notes of the magnitude of the *smallest exchequer bills* and upwards (in a word, all annuity notes above the £50 : 8s. notes,) will not arrive till after stock 3 per cents. are at par; for, till then, exchequer bills, yielding

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in which case the series will, if complete, consist of *nine terms below* the standard note, and as many *above* it — total, nineteen; having *two* for their common difference: values as by the annexed table.

Art. 14. That when the credit of this paper has been established, or even from the first, notes already taken out by individuals be received (as bank-notes are at present) at the several government offices [12] in the country as well as in the town, and re-issued from thence in the way of circulation, as they would be between individual and individual, charged with the intervening interest, to as many as may think proper to receive them at that value.

Art. 15. That the offices from whence the proposed paper is issued to the purchasers, be, *in the first instance*, the several *local post-offices* [13] in town and country, with the

more interest, will draw off from the proposed annuity notes all customers whose quantum of money capable of being kept in hand extends to such a purchase; unless possibly in the remote parts of the country, where exchequer bills are unknown, or not in use.

[12] Art. 14. (*Received at government offices.*) Were this to be done from the *first*, a great lift would certainly be given to the proposed currency at once: the only objection seems to be, the possibility lest, in case of any sudden turn taken against it by the public mind, the exchequer should for a time be overloaded with it, *i. e.* labour under a *deficit* of cash (the only money that nobody can refuse) to the amount of it. But in Chapter IV. the improbability of such an event, and at the same time an effectual remedy, is pointed out.

Supposing bank-notes to be driven out of the circulation,[a] the same sort of *necessity*, or supposed necessity, which gives employment to *bank* paper in the transactions of government[b] and in other transactions upon a large scale, in preference to cash, to save *counting*, *examining*, and *luggage*, would create an equal demand for the *annuity note* paper on that score.

[a] This (it should seem) would depend upon government; since if government, in the issues of annuity notes, refused to take bank notes in payment for them, the unwillingness to take barren paper, when interest bearing paper was to be had, would soon become general, if not universal. As to the propriety of this, or any further measures in the same view, see Chapters VIII. and IX.

[b] "Guineas *cannot* be used in any considerable dealings," says Mr. H. Thornton, in his evidence before the Committee of the House of Lords on the stoppage of the bank. (Report, p. 72; reprinted in Mr. Allardyce's Address on the Affairs of the Bank, Appendix, p. 54.) By Mr. Abraham Newland's evidence, in the above Report (p. 62,) it appears that the payments of cash into and from the exchequer, are small in comparison with the payments in bank notes; not above £50,000 or £60,000 a-day, upon an average, remaining in the exchequer in the shape of cash; forming a daily total of money (cash and paper together) averaging about £151,095 (see Chap. V.) And out of £20,000,000 paid on the score of dividends at the bank, not above £1,300,000 or £1,400,000 is paid otherwise than in bank-notes.

[13] Art. 15. (*Post-offices.*) *Dispatch*, *punctuality*, *cheapness* in the transaction of the business, *sufficiency of number*, and *equality of distribution* in regard to the *stations*, forming the characteristics of the post-office establishment, as compared with all other provincially-diffused official establishments. These form the properest *stations* for the transaction of the business, as well as the properest, or rather only proper, standard for the *mode* of conducting it. In the London penny post-offices, deliveries of letters six in a day; therefore once every day cannot be too often for deliveries of packets of annuity notes. Six times a-day go letters, some of them with money in them; therefore *once* in a day cannot be too often for money to go without the letters.

The oftener the receiver's hands are emptied of the principal money, the less the degree of pecuniary responsibility that need be required of him: few of the existing post-offices, town or country, that may not be trusted with a day's stock (say £200 or £300) at a time (more in some places, according to the opulence and populousness of the spot;) many whom it would not be prudent to trust with a month's stock, say thirty times that amount.

This public money being required to be kept unmixed with any other monies, and in a government package, and the officer declared to be a "*servant*" of government,—in respect of its deficiency, otherwise than from accident, he *might* be treated on the footing of embezzlement; — capital felony in case of absconding; single otherwise.

In the penny post-office, one-tenth of a penny is the pay in respect of each letter, for marking each with two stamps; besides the trouble of examining and receiving the money, and occasionally of giving change, in the case of those letters with which money is paid.

The proper quantum of pay is in all cases the least that will be accepted by a person competent to the business; such cases only excepted in which, from the nature of the service, the value of it is capable of being raised to an indefinitely increasing pitch of excellence by extraordinary exertions.

With this exception, quantity of *trouble*, *not value* of the subject-matter, any otherwise than with a view to pecuniary responsibility, is the proper standard and efficient cause of demand for pay. *Poundage*, considered as a mode of remuneration, is therefore very apt to be disproportionate and excessive.

On a letter, for which no more than a penny is received — out of which penny the expense of conveyance must be defrayed, as well as a portion of the expense of general superintendence, and a profit made — 10 per cent. for the trouble of receiving it, is at the same time almost as little as *can* be given, and yet (though in this case no more than the tenth part of a penny) as much as *requires* to be given. For receiving the price of a set of stamps, some of them as high as several pounds a-piece, the same poundage would be acknowledged to be excessive.

If the trouble attending the issuing of an annuity note (the filling up the blanks, and examining and taking care of the purchase money) were no greater than that of receiving a penny-post letter (allowance made for the proportion on

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eventual addition of any of the other local government offices (such as the stamp and excise offices,) or in case of need, other offices to be established for the purpose, in such situations and numbers as may be found necessary.

Art. 16. That to save trouble in the issue of the smaller notes, especially the *silver notes*, government reserves to itself the power of fixing the *least* quantity [14] of annuity-note money, which an individual shall be allowed to take out at once; as also to *prescribe* the *composition* of that quantity, taking care to leave to the customer the choice of the composition, as far as it may be a matter of indifference to government.

Art. 17. That powers be given to the king in *council*, or to the *treasury*, from time to time to declare, whether any and what *fee*, not exceeding a certain amount, shall be paid by the *purchaser*, on the emission of each note or parcel of notes constitutive of such or such a sum; as also on the *exchange* of an old note for a fresh note, at the instance of the holder — regard being had in both cases to the magnitude of the sum constituting the value of the note or mass of notes; as also to *call in* at any time any such note or notes, so it be without expense to the holder, for the purpose of their being *examined* or *exchanged;* and, by suspension of interest, or other penalties, to enforce obedience to such calls; as also to declare whether any and what *fee* shall be paid by the holder on the *receipt* of the *interest* due on each note or parcel of notes. [15]

which money is received, and the requisite extra trouble taken,) experience shows that the tenth part of a penny would be a sufficient recompense: but the trouble would be in a considerable degree greater—perhaps three, four, or five times as great; — therefore so, it would be necessary, should the pay. A halfpenny might in this way be necessary, and at the same time sufficient, in the case of the standard note of £12: 16s.; and upon a note of this magnitude, not only a halfpenny, but several pence, might perhaps (as will be seen in Art. 17,) without much inconvenience be thus imposed; and thus, as far as notes of that magnitude were concerned, the expense of management at the local offices might be thrown upon the individuals — the purchasers. But though a purchaser might not grudge a few pence for the profit to be made in the way of interest upon a £12: 16s. note, he certainly would not give so much as a halfpenny for the profit to be made upon a sixpenny note, as it would be three or four years before the interest would have reimbursed the fee thus advanced. In notes that were to a certain degree below the standard note (say in the £3: 4s. or £1: 12s. notes,) it would be necessary that the fee upon each, though not remitted altogether, should be reduced below the amount of the lowest coin, — a farthing; which would be the case, if notes under the £3: 4s. note, for instance, were not to be taken out but in *parcels*, and a halfpenny or a farthing were the fee upon each parcel; in which case it would be necessary that government should make up the difference. This it would be well worth its while to do, even upon the copper notes; since, in Yorkshire, according to Adam Smith, before the restriction on small notes, sixpenny notes were issued by individuals in abundance.

As to the *general* annuity note office, — having no intercourse with individual customers, nor with the local office-keepers but by letter, the nature of the business admits of its being conducted with perfect regularity, and upon a plan extremely simple. (See Chap. V. § 2, *Profit in respect of management.*)

[14] Art. 16. (*Least quantity.*[a]) A note under this amount would consequently not be capable of being taken out singly, but only as one in a parcel, with other notes of the same or different magnitudes. So also, *perhaps*, in regard to the carrying in notes to the local office to be sent up to the general office, to be returned from thence with the interest; as likewise in regard to the changing large for small notes, or *vice versâ*, or injured notes for fresh ones. But instead of a prohibition, as above, the same end might be answered, perhaps more advantageously, in some, at least, of the above instances, by a small fee, acting as a penalty to the amount of it, as by the next article.

By this means, the offices would be kept clear of the most troublesome, as well as numerous, class of customers. *Silver* notes, for example, would in that case be taken out, not *singly* by *journeymen* manufacturers, but in *parcels* by *masters*, by whom at pay-day they would be distributed among their journeymen.

Interest would by this means be *capable* of being received at the offices upon the smallest notes (which, as above, is necessary to their passing in change for large ones;) though what is probable is, that on the small it will scarcely ever be demanded. (See on this head, Chap. V. *Profit by interest undemanded.*)

What is the least note that can be issued with profit, will be determined by the quantity of *time* occupied in the operations necessary to the issue of it. Possibly on this account, in the silver, or at least in the copper notes (if any,) the actual signature of the local office-keeper might be dispensed with, and a stamp of some kind (affixed at the time of issue at *his* office, or previously at the *general* office) be employed in its stead.

In this power is included that of suspending the issue of notes of any particular magnitude or magnitudes; by which means, in case of an *inordinate* demand for the proposed paper (viz. such an one as shall threaten to swell to a pernicious magnitude the quantity of it producing the effect of money in the circulation,) a stop may be put at any time to the inconvenience. (See Ch. IX. *Rise of Prices.*)

[15] Art. 17. (*Emission, exchange*, or *payment* of *interest.*) Imposing, after the opening of the office, the minutest fee on any of these occasions, would be a breach of engagement, and moreover, if otherwise than by authority of parliament, an invasion of parliamentary rights.

In regard to the fixation of the amount, no harm could result from allowing to the executive government a moderate latitude; such as from a

[a] Not less, for instance, than the amount of the *quarter* note (the £3: 4s. note) or the *half quarter* (the £1: 12s. note.)

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Art. 18. That periodical accounts be *published* of the progress of the issue, [16] as regularly, and circulated as extensively, as the prices of stocks are at present, under heads expressive of the day, the *place*, the number of notes of each *magnitude*, and the *total amount* issued on each day at each place; together with the *increase* or *decrease* of the amount, as compared with former periods; and any such other particulars as may be of use.

§ 2. *Eventual Extension.*

Art. 19. That if, by this and other means, three per cent. stock annuities should ever have risen to par, the produce of the issue of note annuities be thereupon applied to the *paying off*, instead of *buying in* stock annuities; and so *toties quoties*, buying in whenever they are *under* par, paying off whenever they are *at* or *above* par.

Art. 20. That inasmuch as the paying off stock annuities, the greatest part thereof carrying three per cent., will lead to a rapid and almost simultaneous *conversion* [17] of

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farthing to sixpence on the standard note of £12 : 16s.; and room would thus be allowed for following the dictates of convenience, as indicated by experience. Without being so great as to check the *issue*, the fee might perhaps be made to favour the *circulation*. In the circulation it might produce a *premium*, the *maximum* of which would be the amount of the fee.

The progress of the issue being known everywhere, it is scarcely possible that, in one and the same *place*, this paper should be meeting with customers in the way of issue, and at the same time meet with refusals in the way of circulation; the *trouble* of *taking out*, however small, being, with or without the *expense* of the proposed fee, so much saved by taking the note in the course of circulation. Not even as between different places does it seem very likely that any such contrariety should take place; but were the inconvenience to happen, the proposed fee, if made a little larger than would otherwise be necessary, might afford something of a remedy. Suppose the fee on the £12 : 16s. to be 4d., and the circulation dull at York, while the issue was brisk at Bristol: a York banker, taking them at par at York, might, by sending them to a correspondent at Bristol, sell the notes there at 2d. or 3d. premium, especially if a correspondence of that sort were favoured in regard to postage. So long as this lasted, the issue at York would be stopped; instead of getting them at the government office, the customer would get them at the bankers, whereby he would save 1d. or 2d., besides a part of the trouble; and the load upon the market at York would be taken off. An agio to an *unlimited* amount would indeed be destructive of one of the characteristic advantages of the measure; but an agio to an amount thus strictly *limited*, would scarcely (it is supposed) be felt as a disadvantage. Were the note kept in hand, though it were but for a few days, the interest on it for that small space of time would afford complete reimbursement of the greatest possible amount of loss.

If, in regard to the quantum of the fee, the principle were, that it should amount to just so much as would be sufficient for the remuneration of the local distributor, — this, again, would be a reason for making it variable within certain bounds; for, under any given plan for conducting the business, it would be matter of experiment what is the lowest fee that would be sufficient; and by such improvements on the plan, as reflection fed by experience might indicate, the time and trouble, and thence the quantum of remuneration necessary, might from time to time come to be reduced.

[16] Art. 18. (*Accounts published.*) The uses of such publication are as follows: —

1. That, from seeing this paper taken out in the way of *issue*, people may be the more ready to take it in the way of circulation.

2. That in case of its proving to be in any degree an impediment to the circulation of bank and country banker's paper, the parties concerned may, by observing how the paper spreads, have timely warning to withdraw or keep out of the market any superfluity in their own paper.

3. That in case of any local difficulty as to the circulation of the paper in *one* part of the country (for instance, by reason of any sudden and extraordinary demand for cash) the load of the paper in the market may be lightened, by sending it to *another* part of the country, where the issue is observed to be going on briskly.

4. That from the amount of the issue in the course of each given period, indications may be deduced of the degree in which any *temporary* cause of depreciation must have operated, before it can have the effect, not only of stopping the *issue*, but subjecting to a *discount* the quantity already *in circulation*.

5. That *data* may be afforded, from which the several classes of persons interested may be able to foresee the approach of the several results or effects in which they are interested; such as the *rise of stock* 3 per cents. to par — the growing *scarcity* of government annuities — the *reduction* of the *rate of interest* paid by government in respect of them — the increase in the mass of national *capital*, by the paying off the annuitants — the *reduction* of the rate of interest *in general*, &c.

[17.] Art. 20. (*Conversion.*) *Conversion* is a word used for shortness, to indicate the result of two operations: — on the part of government, the redemption of such or such a mass of stock annuities; and on the part of the stockholders so expelled, a purchase made of the fresh mass of note annuities to equal amount — a result which, in the case where a man does not choose to part with the mass of annuity he receives from government, is a necessary consequence.

That the disposition to accede to such conversion should be nearly universal, seems altogether probable. The loss of interest is but a sixtieth; and, in all other points, the change will be greatly to a man's advantage. In a very short period it cannot fail of taking place. When stocks (three per cents.) are no higher than par, the £2 : 19s. note annuities are (it is true) worth, as far as interest only is concerned, no more than £98 : 6 : 8; — but no sooner are three per cents. up at 102, than the £2 : 19s. per cent. are worth upwards of £100¼.

Among any such group of annuitants thus forcibly expelled, there will always be a certain proportion (it is true,) who at the time of the expulsion were desirous of disposing of their annuities, and

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the whole amount thereof into note annuities, bearing nearly the same rate of interest; — and inasmuch as, upon the redemption of the last parcel of redeemable stock annuities, the

would have done so, had the matter been left to their choice. But, by the supposition, there will be at the same time another group desirous of purchasing a mass of annuities, equal at the least to that which is thus wished to be disposed of; otherwise the price of the article would not be at par, which it is supposed to be; — therefore, setting the one demand against the other, the whole amount of the mass of annuities paid off at or above par, may be set down as so much taken from a set of proprietors, who will not part with such their property, but will accept of it in the proposed new shape.

Proposed mode of effecting the conversion. — Adjoining to the room where a man signs in the stock-book a recognition of the redemption of his mass of stock annuities, are two other rooms — a money-room (as at present the dividend-warrant room) and an annuity-note room. Question by the clerk: "Is it money you want? yonder is the room for receiving money, and here is the warrant for it. Do you keep your annuities? yonder is the annuity-note room, and here is your warrant for the amount in annuity-notes."

On this occasion, *two* provisions, customarily inserted in the acts, will require observance:—1. That notice (a year in some instances,[a] half-a-year in others)[b] be given of the intention to pay off; and that the masses paid off at once be not less than of a certain magnitude — £1,000,000 in some cases, £500,000 in others. Of the *former* the object was, as it should seem, that a man may have time to form his plans in regard to the employment of his money; of the *other*, to obviate the suspicion of personal preferences, which, if the masses were small and undetermined, might be manifested in favour of individuals; viz. by paying a man off, or respiting him, whichever were most advantageous at the time.

To comply with these conditions, as far as appears either practicable, or material, or consistent with the practice and intention of the legislature: — suppose the course taken, in regard to the redemption of the *stock* annuities, with a view to their proposed conversion into *note* annuities, to be as follows, viz. —

1. Notice to be given, in the usual form, on the day immediately preceding the *next* day for a half-yearly payment, or on any earlier day subsequent to the then *last* day of half-yearly payment; —such notice to be expressive of a general *intention* on the part of parliament, from and after the day mentioned in such notice, to pay off the then remaining mass of stock annuities, in masses or lots of not less than the above stipulated magnitude of £500,000, as fast as the sums of money for the making of such payments shall respectively be completed; — the order in which the masses shall be paid off, to be determined by a lottery, unless changed in the way next mentioned.

By the publication of the progress of the issue in the newspapers, it will be known all over the kingdom, day by day, what sum is in hand applicable to this purpose. The masses being marked in numerical order for this purpose, each stock-holder will see, day by day, whether the mass his portion of stock belongs to is ripe for payment, or if not, how soon it is likely to become so.

That a *general* notice of the *intention*, in contradistinction to a particular notice for the very day, was all that was meant by the legislature, may be inferred with some degree of assurance from the practice in Mr. Pelham's case. Fifty-seven millions worth, and upwards, was the mass of capital in relation to which notice was given on that occasion — that, in the event mentioned, it should, on a particular day mentioned, be paid off: so that, if the invitation given had remained altogether without compliance (an event which for some time was highly probable,[c]) the whole would on that one day have been to be paid off, and the money put into the hands of as many as on that one day might happen to apply for it. But, that such payment could have taken place, either in respect of the whole of the mass, or so much as the greater part of it, and that, either on the day fixed, or on any assignable subsequent day, within a week's or a month's or even a quarter's distance of it, is a result that does not present itself as probable.

To borrow nearly fifty-eight millions in the lump, and at that early period too—or even nine and twenty millions, and that payable all in one day—presents itself as an affair of no small difficulty, even on the ordinary footing of mutual obligation as between the two contracting parties. How much greater the difficulty, if (as by the supposition contended against) one party (composed of the eventual lenders) was to be bound, while government, the eventual borrower, was to remain loose!

It seems, therefore, that (according to the interpretation put in that instance by parliament) by a notice that the capital of government annuities will, to such amount, be paid off on such a day, nothing more is to be understood than that (as here proposed) a *part* will be paid off on *that* day to such as apply for it, and the *remainder* at some *subsequent* day or days, according as the money for paying off shall happen to come to hand.

If not—and if it were regarded as an article not to be dispensed with, that no one parcel of the consolidated 3 per cents. should be paid off but on one of the half-yearly days in use for the payment of the dividends on those annuities, and that day posterior, by one day at least above a twelve-month, to the first day on which the notice to that effect shall have been made public — the consequence will be, that upon the *first* parcel so paid off, the loss of *time* and *interest* will amount to a full twelvemonth; but that upon all *subsequent* parcels, the loss of time will be such as cannot amount to less than a year and a quarter upon the whole. For paying off the *first* parcel — say on the 25th of December 1804 — the latest day on which notice can be made public, will be the 24th of December 1803. For paying off the *second* parcel, the earliest day that can be appointed will be the 24th of June 1805. Should a parcel of the magnitude required by the act (£500,000) have come in or been made sure by the 25th of December 1803, notice may be given on the next day, appointing, as the day of payment in respect of that *second* sum, the 24th of June 1805. But

[a] 25 Geo. II. c. 27 (the first consolidated act;) 39 & 40 Geo. III. c. 32.

[b] 3 Geo. III. c. 10.

[c] Sinclair, ii. 112.

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emission of note annuities at this rate of interest must (according to article 6) immediately cease; — and inasmuch as the mass of government annuities will in the meantime

on this *second* transaction, 1¼ year, all but a day, would be lost. If, again, by the 23d of June 1804, a *third* sum happened to have been collected or made sure, and notice given accordingly for the 24th of June 1805, as before — then upon that sum no more than a year and a day would be lost, as above mentioned; and upon the *whole*, supposing the intermediate days — of collection perfected, and notice given accordingly — to run in a regular series between such earliest day and such latest day, it would, by the nature of an arithmetical series come to the same thing as if the quantity of time thus lost amounted to 1¼ year in *each* instance.

2. Meantime, by way of encouragement to stockholders to *expedite* the measure by their concurrence, *books* to be opened, in which each individual may *subscribe* his consent to take annuity notes for his stock at the same price. The amounts of stock thus subscribed to be made up into masses of a determinate size, as above, — the lot which is first filled to be the last paid off — and so on in the order of the lots; — and the operation of the lottery to be confined to such parcels of stock as shall have remained unsubscribed.

By subscribing, and subscribing as soon as possible, a man (it has been seen) will have nothing or next to nothing to lose, and he will have much to gain.

As the holders of annuity-note paper of the first issue will all of them, sooner or later, be paid off, and as, when any such note of the first issue is paid off, the holder will have no certain means of placing his money out at interest upon the same sort of security, otherwise than by purchasing into the second issue at the reduced rate of that issue, he will naturally be upon the look-out for paper of the first issue. But as this will be the case with regard to all such expelled note-holders as fast as they are expelled, such paper will (it is evident) bear an increase of price; — which increase will of course be greater, the more remote the period appears, at which the mass, to which the note belongs, is about to be paid off.

From every such mass of annuity of the first issue, it is known that sooner or later one quarter of the amount will be struck off, unless a man chooses to receive the principal or purchase-money instead of it; and this quarter, compared with the reduced remainder, may be considered as a sort of temporary annuity, for a term not altogether certain, but longer and longer in proportion as the note stands higher on the privileged list.

Under these circumstances, the opening of a second issue will immediately (it is evident) give an increased value to the whole remaining paper of the first issue; — which increase cannot at any time, nor in the instance of any class, amount to quite so much as 25 per cent. (the difference between the rates of interest on the first and last issues,) payable during the time of respite — and from thence will vary, in a series decreasing down to 0. The notes of each class will at all times be worth something more than the notes of the same magnitude, in an inferior class; and as the time for the redemption of the highest or last redeemable class, and thereby for the reduction of the rate of interest upon each class, is seen to approach, the extra value of the notes of all the classes will sink together.

At the outset, this rise in value will approach the nearer to the 25 per cent., the less quick the progress of the redemption promises to be. Suppose it to be no more than 12½ per cent., or even 6¼ per cent., even at the very outset, and in the case of the very highest class, the prospect of it will still hold out a very ample *premium* or *bonus* to subscribers. The subscription will be a sort of *lottery*, with all prizes and no blanks; since the worst that can happen to a man will be, not to receive more than he ever paid principal and interest; nor yet so entirely a lottery, but that diligence will increase his chance.

As between note and note in the same class, the order of priority in respect of redemption might be determined, either by the number of the note (as in the case of exchequer bills,) or by lot.

The *complication* incident to this state of things may present itself at the moment as an objection to the measure: — notes of two issues current at a time; those of the closed issue bearing a premium, different in the several classes, however numerous; those of the open issue, bearing no premium; and each note increasing, and thereby varying in value every year, half-year, quarter, month, week, or day, as time advances, according to the magnitude of the note. But as to government, the complication will not be attended with any embarrassment. Whatever variation the price may be subjected to in the way of *circulation*, there will be but one price for government to *pay* on *redemption*, or *receive* on *issue*. To individuals, the variety is productive of neither loss nor trouble. Where the premium is an object to a man, he will accordingly pay it on taking a note, or make a demand of it on parting with it; where the difference is no object, he will neither pay it nor demand it. It cannot be productive of any dispute; since whatever may be the amount, no man has any *right* to claim it; there will be no authoritative *table* to fix it, and attest the reality of it, as in the case of the augmentation by *lapse of time* — I mean by daily or half-yearly interest unreceived. To those who will take upon them the trouble of attending to the variation, and whose dealings in relation to it will thence be conducted on a large scale, it will afford a source of profit; and in that character may afford to two classes of professional men, the stock-broker and the stock-jobber, a compensation for any loss they might otherwise sustain from the measure.

Even the owners of the 4 and 5 per cents. might find in this arrangement, not only an inducement to come cheerfully into the measure, but such a compensation, or at least mitigation, in respect of their loss, as on the score of humanity (for *strict justice* is out of the question) may perhaps not be disapproved. For such of them as shall have come in by a time to be fixed, the highest classes may be reserved, in preference even to the earliest subscribers of the 3 per cents.; — the 5 per cents. being ranked in this respect above the 4 per cents.

As the purchasers of these extra-interest annuities have had the less to pay for them, on account of the prospect of their redemption, inasmuch that, at a time when 3 per cents. are at 64, even 5 per cents. are 3 per cent. below par, the redemption might, under the above terms, be, in appearance at least, rather profitable than otherwise; and really and indisputably profitable in the instance of all such as, at the time in ques-

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have already been much reduced, and by the continued operation of the continually increasing powers of the existing sinking funds, the scarcity *will* be growing greater and greater every day (notwithstanding that, being continually exposed to be paid off at par, they will be incapable of bearing any considerable *premium*) the offices be opened thereupon for the emission of a *second* issue, at a *reduced* rate of interest, say £2 : 7 : 5 — *i. e.* 2⅜ per cent. nearly — (viz. by raising the price of the standard note from £12 : 16s. to £16 ;) — the produce of such *second* issue to be applied to the paying off the notes of the *first* issue, and the second issue to *close* as soon as the redemption of the notes of the first issue shall have been completed.

Art. 21. That the amount of all interest saved, as well by the redemption of stock annuities redeemed by the produce of the existing or other future funds (and, therefore, without the preparatory emission of a mass of annuity-note paper to the corresponding value) as by the progress made in the reduction of the rate of interest in the way just mentioned (viz. by the preparatory emission of a mass of annuity-note paper, at a lower rate of interest, followed by the redemption of a correspondent mass of stock annuities, or note annuities, at the higher rate,) be carried (immediately) to the sinking funds — on the principle of the provision made, in the like behalf, in and by the existing act (viz. the New Sinking Fund Act, 32 Geo. III. c. 32, § 2.)

Art. 22. That, *immediately* upon the redemption of the last parcel of note annuities of the *first* issue, the offices be *again* opened for the emission of a third issue at the next lowest rate of interest suitable to the nature of note annuities on which interest is computed daily, say £1 : 9 : 6 — *i. e.* 1½ *per cent.* nearly [18] ; — viz. by raising the price of the standard note from £16 to £25 : 4s. ; — the produce of such *third* issue to be appropriated to the redemption of the note annuities of the *second* issue as above : with like provision as above in favour of the *sinking funds :* and so *toties quoties*, in so far as any such farther reduction may be deemed eligible.

Art. 23. That inasmuch as, so long as any portion of the redeemable annuities remain unextinguished, there may remain two parcels of annuity-note paper, bearing two different rates of interest — the higher *closed*, the other *open* — provision be made, that in case of the creation of any portion of capital in stock annuities, at any time thereafter, by reason of money borrowed for the support of a war or otherwise, powers be given for extending the issue of note annuities to the extent of the capital so created, and at the rate of interest the then last or open issue of note annuities shall receive.

CHAPTER II.

FORM OF AN ANNUITY NOTE.

(See Table II.)

CHAPTER III.

COMPARISON OF THE PROPOSED, WITH THE EXISTING GOVERNMENT SECURITIES, &C.

§ 1. *Features possessed in common with other securities.*

1. RATE of interest low, inferior to that afforded by money laid out in the purchase of stock annuities. Exemplified in the notes of *country bankers.*

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tion, would have been disposed to employ their money in other ways.

Even in the case of such as were prevented by *distance* from subscribing within the time, an expedient might perhaps be found for preserving the individuals as well as the public from being deprived of the advantage; stockholders, for example, resident in, or on a voyage to or from, the East or West Indies.

At the instance of a spontaneous though unauthorized agent, a person so circumstanced might be admitted to the benefit of the subscription, the portion of stock annuities cancelled, and the amount in annuity notes kept in deposit for him at the office, such agent undertaking to indemnify the proprietor against *any loss* by the subscription, and finding such sufficient security for the fulfilment of the undertaking as shall be appointed for that purpose.

As to the clause restricting government from paying otherwise than in such large masses as the £500,000 and £1,000,000 above mentioned, supposing the object above conjectured (viz. the exclusion of personal preferences) to have been the real one, the expedient proposed (viz. determination by lot—an expedient employed in similar instances under the old French government) will be equally competent to the attainment of it. In all events, the difficulty would not extend beyond the conversion effected by the *first* issue. The *paper*, if accepted, would stand clear of this and other such clogs.

Were it otherwise, a stipulation of this sort might be attended with some inconvenience and expense. As by the nature of the process of reduction, the charge precedes the exoneration (since it is by the charge, and that alone, that the money for the exoneration is to be furnished,) the consequence might be, that, to the extent of a certain amount of paper, a half-year's charge, on the score of interest, might be incurred upon so much paper of the *open* issue, before the sums were collected that would be necessary to effect the exoneration by the redemption of a correspondent quantity of paper of the *closed* issue.

[18] Art. 22. (1½ *per cent. nearly.*) See Table I. Note *m*. From 3 to 1½ is no greater reduction than from 6 to 3 ; — being that which, in the course of 33 years, viz. between 1717 and 1750, took place in regard to divers parcels of stock, though the reduction of the great mass from 4 to 3 per cent. was not completed till 1757. (See Sinclair on the Revenue, II. 112.)

When Adam Smith wrote, the rate of interest in the Dutch funds was already as low as 2 per cent. [B. I. ch. ix.]

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2. *Perpetuity*, of the mass of interest granted, subject to redemption. — Taken from stock annuities; — agrees with Irish debentures and India bonds; — differs from Exchequer bills.

3. *The principal not demandable.* — Taken from stock annuities; — agrees with Irish debentures and India bonds: also with navy, victualling, transport bills, and ordnance debentures; — differs from bank, bankers, and private notes and bills.

4. Interest *without special fund*, over and above the general consolidated fund. — Taken from Exchequer bills; — differs from the former practice in the creation of stock annuities; — agrees with all the other above-mentioned government engagements.

5. The quantity issued, *incapable of exceeding the quantity demanded at the original price.* — Agrees with bank paper, and in practice with bankers' paper; — differs from stock annuities, Irish debentures, exchequer bills, and navy, &c. bills.

6. The evidence of the engagement consigned to a portable instrument instead of a *fixed book.* — Taken from exchequer bills; — differs from stock annuities; — agrees with Irish debentures, and the now disused navy, victualling, transport, and ordnance bills or debentures: — also with India bonds, bank notes, bankers' promissory notes, and private promissory notes, and bills of exchange.

7. The *paper*, by its *size*, *shape*, *texture*, and *thinness*, particularly fitted for circulation. — Taken from bank paper; — agrees more or less with bankers' paper, and with the French assignats — differs from all the other above-mentioned engagements, except from some late issues of exchequer bills, in respect of *size*.

8. Application of the *profit* of the measure *towards the reduction of the national debt.* — Taken from the sale of the land tax — *i. e.* the exchange of so many portions of the annual produce of that tax for portions of stock annuities; — differs from all the other engagements above mentioned.

§ 2. *Features altogether new.*

9. Secure provision for the *instant* extinction of the debt created by it.

10. The amount of it incapable of exceeding the amount of the existing debt.

11. Funds, no other than those already provided for the existing debt; but the security better, in respect of the appropriation of the profit to the exoneration of the fund, by the continual redemption of a greater mass of the debt than the mass continually created.

12. Interest receivable, with scarcely any trouble or expense, wherever *letters* are receivable.

13. The note or instrument serving as security for the interest, purchasable of government with *scarcely any* trouble or expense, wherever *letters* are receivable.

14. Ditto, receivable in the course of circulation, and with the interest, *without any* trouble or expense. *N.B.* Exchequer bills, India bonds, &c., are not obtainable in the course of circulation, without the expense of brokerage; to which is added, out of London, the expense of postage, and the expense of professional, or obligation of gratuitous agency.

15. Quantity obtainable, adapted to every purse, from the largest to the smallest. — Bankers' notes, limited as they are, on the side of diminution by law, and in point of variety of magnitude by the narrowness of the market, &c., in the instance of each banking-house, share this advantage in an imperfect and inadequate degree.

16. Facility afforded for ascertaining by inspection, without calculation, the amount of interest due, &c.

17. Securities against forgery. — See Ch. II. Table II. *Form of a note.* [Notes 14, 22, and 24.]

18. Facility thence afforded for *ascertaining the value in respect of genuineness* — an advantage it has over gold and silver coin, and which is shared with it in but an imperfect degree by bank and bankers' papers, &c., for want of the securities against forgery.

19. Means afforded of making *compound interest*, without hazard, trouble, or expense. Shared in an imperfect degree (being attended with hazard, trouble, and expense) by stock annuities — completely impracticable by any other means.

20. *Security against depreciation.* — The price can never rise, because any quantity may be had at the original price, so long as any portion of stock annuities remains unredeemed. In the *ordinary state of things*, no man need take an inferior price in the way of circulation, when men are giving the full price for it in the way of issue. As to the probability of any state of things so extraordinary as to produce a discount, see Ch. IV. *Grounds*, &c. Bank and bankers' paper are incapable of rise; but, in several instances, the one has experienced a partial, and the other a total loss of value.*

* A government engagement could not, like this, have been rendered *depreciation proof*, but for the pre-existence of stock annuities, and its connexion with them as above. The exigencies of government not being susceptible of limitation, no species of engagement could be offered, of which the price should be fixed, and the quantity limited to what could be disposed of at that price, but for the co-existence of some other species of engagement unlimited in respect of the quantity offered at market, and thence exposed to an unlimited diminution of price.

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CHAPTER IV.

GROUNDS OF EXPECTATION, IN REGARD TO THE PROPOSED MEASURE.

WHAT is expected of the proposed currency is: —

1. That it will be taken out in the way of issue,
2. – – at the fixed price put upon it;
3. – – be received in circulation
4. – – at the same price;
5. – – with the addition of the interest,
6. – – and without undergoing any subsequent depreciation;
7. – – and will thus continue to circulate among individuals of all classes.

That it will be taken out in the way of issue, and pass in the way of circulation, at 3 per cent. nearly (the rate of interest put upon it,) notwithstanding the higher interest yielded by stock annuities, Irish debentures, exchequer bills, and India bonds, is proved by the example of bankers' paper, the interest on which runs from 2 to a nominal 3 per cent.; but really not so much, by reason of divers conditions, which reduce the value of it; besides that, in these instances, the engagement is not perpetual, nor the security so good.

That the *interest* due will be allowed for in circulation, is put out of doubt by the usage in the course of exchequer bills, navy bills, and India bonds; though none of these papers are provided with the *tables*, which do away the trouble of computation altogether, however small the sum, and however short the time.

The following may serve as a view of the masses of money (cash or bank paper,) *capable* of being employed in the purchase of this paper, whether in the way of issue, or in the course of the circulation — the time when the paper is capable of being taken in hand, being the time when the several masses of money respectively come in hand; and the time for parting with the paper, being the time when the money must or would have been parted with.

I. Monies capable of being employed in the purchase of the proposed paper, for the purpose of *perpetual* or *permanent* income, *without* any view to circulation; and that would thereby afford to the note-holder, so long as the paper were kept in hand, a mass of perpetual annuities on a small scale.

1. Money actually kept up in the form of a *petty hoard*, or hoard upon a small scale, with or without accumulation, to serve as a fund for demands, more or less remote and certain, but *determinate;* such as marriage, apprenticing out, or portioning children — provision for widowhood or superannuation — purchase of articles of stock in agriculture or manufactures, building, or furniture of such a price as to require a persevering course of frugality to raise the amount.

2. Money, the amount of which *would be* kept up in the shape of the proposed interest-bearing paper, if the proposed encouragement were to be held out.

3. Money actually kept in reserve for contingent and *indeterminate* expenses.

4. Money that *would* be kept in reserve for such purposes.*

II. Monies that could not, or would not, have been employed in the purchase of the proposed paper, *but with a view to circulation;* the amount being destined to be otherwise employed or spent within a smaller or larger compass of time, in masses or in driblets, as the money (cash or bank paper) would have been employed or expended.

5. Money coming in the shape of *fixed* income, *i. e.* to an amount certain, and destined for current expenditure.

6. Money coming in the shape of *casual* income, *i. e.* to an amount uncertain, and whether in driblets or large masses, and destined (as above) for current expenditure.

7. Money received in the shape of income in *trust* on private account: *ex. gr.* by land stewards, army and navy agents, guardians, receivers of the estates of corporations, of estates thrown into Chancery, &c. See Ch. XI.

8. Money received in trust on *public* account, in its passage to or from the exchequer: *ex. gr.* by collectors and receivers of the land tax, customs, excise, stamps, assessed taxes, boards and individuals receiving impress money for various services. See Ch. V.

9. Money already in capital sums (whether received on the score of debt, or by sale of lands, houses, government annuities, shares in a joint stock company, succession, testament, or gradual accumulation) *under engagement* to be laid out, on a day certain or uncertain, in a mode of *permanent investment: ex. gr.* purchase of land, houses, or government annuities; shares in a joint-stock company,

* This (should it ever come into existence) will be the only species of property known, which not only pays for keeping, but pays without either risk or trouble. To the aged and parsimonious, it will be a new discovered treasure. Timidity and indolence are the natural accompaniments of that disposition to parsimony which is so natural an accompaniment of old age. To place money out at interest in any other way, is a work not only of exertion but of hazard: in this way, a man escapes from both.

To *hoard* money — to keep in hand any quantity that might be placed out at interest — is to suffer a continually increasing loss. Yet the habit of sustaining this loss is found a concomitant — and that not an unfrequent one — of the habit of parsimony.

At the hour of death, ready money, in large masses, has been found in the hands of the parsimonious of all ranks, from the beggar to the prince. But what prince, or what beggar, is there, who will hoard metallic money, when, by simply forbearing to part with this new species of paper money, he may, every day of his life, be not only preserving his property, but adding to it?

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loan on mortgage or bond, stocking of a farm, or establishment of a manufactory.

10. Money already in capital sums *not under engagement*, but waiting for opportunities of being laid out, as above.

11. Money already in capital sums, not under engagement, but waiting for opportunities of temporary employment — such as loan by discount of bills, purchases in the above ways on speculation, purchases in the way of trade, &c.

12. Money, as yet in small sums (whether saved from fixed or casual income,) kept in hand for accumulation.

13. Money *received* in the shape of *capital*, in trust on private account: *ex. gr.* by assignees of bankrupts and insolvents, prize agents, executors, and administrators, turning effects into money, &c.

14. Money destined for the discharge of debts, and kept in hand while accumulating into the sum due, or waiting for the time when due, or for their being demanded.*

The ground of the expectation thus entertained on behalf of the proposed currency, will appear the stronger, the more closely the advantages conferred by the possession of it are compared with the advantages afforded by the several other sorts of securities, or modes of placing out money, considered as coming in competition with it; — viz. *stock* annuities, *exchequer bills*, and the market constituted by the demands of *individual borrowers*, *country banking-houses* included, as well as those afforded by *cash* itself, and by *Bank* of England *notes*.

I. Compared with the market afforded by *stock* annuities, we shall find it possessed of the following advantages: —

I. In regard to *purchase* —

1. No trouble or expense on the score of journeys to London, or attendance there; 2. No expense on the score of agency, 3. Brokerage, 4. Stamp duties, 5. Fees for powers of attorney, or, 6. Postage; 7. No danger of loss by buying to a disadvantage.

II. During *custody* —

1. Interest daily — not so much as a day's interest need ever be lost; 2. Interest receivable without trouble; 3. Compound interest capable of being made with certainty and facility; 4. Settlements of money in trust may be made by this means, without trouble or expense.

III. In regard to *transfer* —

1. No expense or trouble on the score of journeys or attendances; 2. No expense on the score of agency, 3. Brokerage, 4. Stamp duties, 5. Fees for powers of attorney, or, 6. Postage; 7. No danger of loss by selling to a disadvantage; 8. The capitals of the mass of notes, employable in the shape of circulating capital, in whatever portions may from time to time be requisite — just like so much cash — without trouble or expense.†

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* Of the annual amount of money received in the shape of income, and *capable* of being employed in the purchase of the proposed paper, a conception may be formed from the supposed amounts of the several component branches of the national income, as exhibited in the *income table* framed for the purpose of the income tax, and printed in Mr. Secretary Rose's Finance Pamphlet of 1799; to which are subjoined the amounts of the same articles, according to the estimate of Dr. Beeke.[a]

	Official Estimate.	Dr. Beeke's Estimate.
Land rents, . .	£25,000,000	£20,000,000
Farming profits, . .	19,000,000	15,000,000
Tithes, ...	5,000,000	2,500,000
Mines, navigation, and timber, ...	3,600,000	4,500,000
Houses, ...	6,000,000	10,000,000
Proportion for Scotland, ...	5,000,000	8,500,000
Income from possessions beyond sea, .	5,000,000	4,000,000
Interest in funds, deducting foreign property, ...	15,000,000	15,000,000
Foreign trade, . . .	12,000,000	8,000,000
Shipping, ...	- - - -	2,000,000
Home trade, . . .	18,000,000	18,000,000
Other trade, . . .	10,000,000	- - - -
Labour, ...	- - - -	110,000,000
	£123,000,000	£217,500,000

Observations.—The more regular the receipt, and the larger the masses received, are, in proportion to the total income of the year, the better adapted are they to the purpose of the proposed temporary employment. Stock dividends occupy the highest point of the scale — professional profits, where accumulation is out of the case, the lowest. The weekly pay of a labourer would afford him no inducement to take out annuity-note paper in the way of issue, unless in case of hoarding; but in the way of circulation, it would at least be upon a footing with cash.

[a] Observations on the Income Tax, second edition, 1800.

The amount of the sums which, having been received in the shape of *capital*, are susceptible of the proposed temporary employment, is altogether unsusceptible of calculation. In the course of the year, it is greater or less than that of the sums received and kept for the purpose of expenditure.

† The following *bill of costs*, exhibiting the charges attendant on dealings in stock, though it were for the minutest portion, in cases where, by distance of residence and want of connexions in the metropolis, the party is obliged to have recourse, in the regular way of business, to professional assistance, may serve to show how ill adapted government annuities are, upon their present footing of stock annuities, to enable a man to employ in that way to advantage, either a *small* sum for any length of time, or even a considerable sum for a *short* time; and this, even independently of those contingencies which in the latter case have so frequently the effect of converting expected profit into positive loss. The charges are such as I have reason to look upon as rather under than overrated. By doing certain parts of the business himself, or getting them done gratis by a friend, a man may save so much of the expense;

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II. To money circumstanced as in the case last supposed — viz. to be laid out either in small parcels or parcels of any magnitude for a short time — the purchase of exchequer bills is in some measure free from the objections to which the purchase of stock annuities is exposed, but it is open to others: —

1. The period for which they are issued is limited in general to a time of war; besides which, their existence is at all times precarious.

2. The quantity of them is continually liable to increase, as well as the time of payment to retardation, and thence their marketable value to depreciation to an unknown amount.

3. Exchequer bills are never issued for sums less than £100; by which circumstance every mass of money less than that considerable amount is excluded from this branch of the market.

III. Circumstances of comparative disadvantage attending the private market may be reckoned as follows, viz. —

1. Trouble and expense and loss of time attending the inquiry necessary in many cases to the meeting with a fit opportunity of placing out money at interest. — N.B. *In the case of the proposed market, this circumstance of disadvantage is altogether wanting.*

2. Want of coincidence between the quantum of the sum wanted to be borrowed and that of the sum ready to be lent. — *Wanting altogether.*

3. Want of coincidence between the time for which money is wanted to be *borrowed*, and the time for which it can conveniently be *lent*. — *Wanting altogether.*

4. Difficulty of obtaining sufficient assurance respecting the competency of the security in its several points of view. — *Wanting altogether.*

5. Trouble, expense, loss of time and interest, attendant on the adjustment of the pecuniary part of the security. — *Wanting altogether.*

6. Trouble, sometimes expense, loss of time and interest, attendant on the process of demanding and obtaining payment of the interest alone, or of principle and interest together, as the case may be.—*Trouble and loss of time—reduced to next to nothing: Expense and loss of interest.* —*Wanting altogether.*

7. Danger of loss, and particular incidental inconvenience, by unexpected delay in regard to payment — *wanting altogether.*

8. Danger and fear of the necessity of litigation. — *Wanting altogether.*

9. Unwillingness to deal with a stranger,

— as his wife might save the expense of a mantua-maker, by making her own gown: but a contingency of this sort does not prevent the professional charge from being, in a general point of view, the proper standard of expense.

	s.	d.	£.	s.	d.
I. *Charges on Purchase.*					
1. Country attorney's attendance on the party, to take instructions for the purchase of the stock in the party's name,	3	4			
2. Town agent's attendance on a broker to make purchase,	3	4			
3. Broker's fee on the smallest purchase,	2	6			
4. Attendance at the bank for a blank power of attorney to accept stock and receive dividends, agent's and attorney's fees together,	6	8	2	5	8
5. Price of the power of attorney (in 1800, now 21s.),	11	6			
6. Attorney's attending and attesting execution of ditto, with two witnesses,	6	8			
7. Attendance at the bank to get it passed (agent's and attorney's fees together,) *N.B.*—This is commonly charged, but if contested, not allowed.	6	8			
8. Letters and parcels (a usual lumping charge,)	5	0			
II. *Charges in respect of Receipt of Dividends.*					
1. Agent's attendance at the bank to accept stock (both fees as before,)	6	8			
2. Fees on receipt of each dividend (both,)	6	8	0	18	4
3. Letters and parcels,	5	0			
			3	4	0
III. *Charges on Sale.*					
1. Attendance to give commission to a broker for the sale (both),	6	8			
2. Attendance for a blank power of attorney, from the principal to the agent in town, for selling (both),	6	8			
3. Power of attorney, (now 21s.)	11	6	2	5	8
4. Attendance on execution (both),	6	8			
5. Attendance at the bank to make the transfer (both),	6	8			
6. Broker's fee,	2	6			
7. Letters and parcels,	5	0			
			5	9	8
IV. *Contingent Charges.*					
1. Fee on private transfer, — if the books were shut at the time of the purchase, 2s. 6d.; the same if they were shut at the time of the sale; charges therefore on both together,			0	5	0
			£5	14	8

If the party die before the stock is resold, the whole of the above expense of £2 : 5 : 8 will be to be repeated; and to it there will be to be added the expenses attendant upon proving the will, or taking out letters of administration to the deceased.

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in consideration of the uncertainty respecting his trust-worthiness in respect of moral character and pecuniary sufficiency. — *Wanting altogether.*

10. Unwillingness to deal with the individual, if a stranger, in respect of the risk of being eventually obliged either to distress him by pressing for payment, or to submit to loss for want of such importunity in many cases. In the instance of a friend, in case of any apprehension of solvency, still more if on that of moral trustworthiness, unwillingness still greater. — *Wanting altogether.*

11. Unwillingness to accept of interest from a friend, especially if it be on a small sum, or for a short time. — *Wanting altogether.*

12. Unwillingness, through shame, to accept, and much more to demand, interest for sums and times separately trifling, how considerable soever in their collective amount. — *Wanting altogether.*

13. Embarrassment, disputes, and loss of time in the computation of interest on small or fractional sums, or for short and fractional periods. — *Wanting altogether.*

14. Danger of loss by death, marriage, or other change of condition on the part of the borrower, whereby, as far as mere personal security is concerned, a security originally sufficient may become bad or precarious. — *Wanting altogether.*

That it should continue to circulate without any depreciation, is not essential to the existence of a paper currency — witness the case of exchequer bills and other government paper. But though the property of circulating without depreciation may not be essential to the circulation of this annuity-note paper, it will at any rate be highly conducive to it.

Depreciation proof, it must be confessed, it cannot be, any further than the government, of whose promises it is the vehicle, is destruction proof: by any cause, therefore, that threatens immediate danger to the government — such as invasion, for example, or civil war — its value will be liable to be diminished. These cases can never be urged as an objection specially applicable to the proposed measure.

The measure would not impair, but rather add to the solvency of the government: by the profit it would afford, additional means would be afforded for the reduction of the debt of government.

To the security of government it would add by the multitude of hands it would engage by the tie of interest in the support of government. To create and maintain an interest of this sort is a most happy property common to all government securities: but all the government securities yet known in this country are confined in their circulation to the superior and least numerous classes. It is among the characteristic properties of the proposed new government security, to spread itself among the poorer and most numerous classes, and thus to engage them to give their support to government.

Against depreciation from any sudden demand for payment, the proposed paper is not only *as* secure as the existing government papers, but more so: those other papers engage to pay the principal and interest; the proposed paper, the interest only. In the one case, the fund drawn upon is the revenue of a single year, or some small number of years; in the other case, the fund drawn upon is the revenue of thirty-five successive years.

Setting aside the extreme cases here in question, there is but one cause of depreciation to which government paper stands exposed, and that is the forcing of the market. The proposed paper *alone* is not exposed to this cause of depreciation: it will be issued only in proportion to the demand, and is rendered for ever incapable of exceeding it. The produce also will be employed in strengthening the security and lightening the load of the same commodity at market.

It may, however, be urged, that though the proposed paper can never be sold under the par price, it may, in consequence of the demand for its correlative hard cash, cease to bear that price. That such would be the effect in the event of a civil war or serious invasion, will scarcely admit of doubt; and that an effect of the same nature, though to a less amount, should be liable to be produced by other causes, can hardly be regarded as improbable.

To this it may be answered —

1. That admitting (for argument's sake) that such a result would occasionally take place to a certain degree, still this would not operate as an argument against the institution of the proposed plan, unless such a result were to appear more likely to take place, or likely to take place in a greater degree with regard to it, than with regard to any other circulating government securities.

2. That though such a state of things as the objection supposes be conceivable, yet no ground can be stated, either in point of reason or experience, for regarding it as likely ever to be realized. To whatever extent the amount of the proposed paper may have arrived at the time of the supposed extra demand for cash, it cannot have attained to it but in consequence of a proportionable preference given to it in comparison with hard cash. And the cause of that preference is a circumstance not exposed to change. It consists in this, viz. that principal with interest amounts to more than principal alone: £103 is more than £100, and the ratio is not less at one time than another.

For the purposes of expenditure within

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the limits of the British empire, the proposed paper could never lose its superiority; and as to so extraordinary a demand for the precious metals for exportation to foreign countries, no such case appears ever yet to have been realized; — the scarcity of bullion in 1796, in the opinion of the most competent judges, being referable not to the extent of the foreign demands, but to the constitution of the existing private paper, payable on demand; to the experienced brittleness of some of the country paper; to the occasional scantiness of the paper of the great chartered company, coupled with its preceding copiousness, and the excess of the advances made by the company to government, — causes which after all would not have been adequate to the production of the effect, had it not been for those alarms of invasion which were prevalent at the time.

3. That no such extra demand for cash, supposing it to exist, could produce any depreciation in the price of the proposed paper till after it had put an entire stop to the purchase of it in the way of issue; since the progress of the issue, being matter of universal notoriety, it could never (in virtue of Art. 18) happen, that in any one part of the country (the expense of postage being out of the question) a man should give £100 for such a quantity of this paper as might in any other part of the country be had for £99: 19s. But in the nature of things, setting aside the influence of the supposed extraordinary and temporary causes, the amount of the demand for this paper cannot but be regularly receiving a regular and very rapid increase.

4. But if, in a case thus void of probability, it were worth while to look out for a remedy, a remedy, and that of the preservative kind, might easily be provided for it: I mean that of a cash fund (not to exceed, suppose a million) formed by a reserve made of a part of the profits of the operation (as per Art. 9,) to be employed in case of need in the support of the price of the proposed paper, by either buying it in with cash, or taking it in pawn for cash, from the time that the discount upon it had risen to an amount worth regarding.

In consideration of this steadiness of price, the proposed paper would become *everybody's paper;* all persons possessing any of the masses of money above enumerated — that is, all classes of the community — are likely to be included among the holders of the proposed paper, either as customers for permanent or temporary annuities upon large or small scales; and as it would possess a *value in use* superior to that of gold and silver, inasmuch as it would yield a profit whilst it was retained; and inasmuch as it would possess a solidity of value far exceeding the paper of any private banker, or even the paper of the bank of England — a solidity only to be destroyed by destroying the power of the government, to pay the interest promised to be paid — a solidity increasing with the amount issued — it would be secure of constant circulation from hand to hand.

Being the holder of an annuity note, there is not a person living on whom I have any right to call upon to give me value for it: — but had it not been for the advantage accruing from the holding of the note, I should not have become the holder of it: and as the advantage thus accruing to me from the holding of this note is no greater to me than it will be to thousands of other people — in a word, to every man without exception, to whom it can be in my way to offer it — in the event of his becoming the holder of it in my stead, the certainty of my obtaining value for it at any time wants nothing of being entire.

No one living is bound to give me silver for the guinea I have in my pocket; yet who is there that ever hesitated to receive a guinea, under the apprehension of not being able to get change for it? Not only the self-regarding advantage of making profit by goods sold for part of the value, engages my neighbour, the shopkeeper, to change it for me, on my laying out to the value of a few halfpence with him, but the social consideration of amity and neighbourhood is sufficient to procure for me the same accommodation at his hands, without any such personal advantage. In the case of the annuity note, the social consideration not only operates with equal force, but has the personal consideration of the advantage to be gained by the holding of the note to back and strengthen it.

The material question is, — Will it be received? This being answered, and answered satisfactorily, the other question, — Why will it be received? how comes it that it will be received? — is matter only of curiosity and speculation.

It may further be observed, that no man will ever have obtained any such note *in the way of issue* (I mean at the office,) who would not have preferred obtaining it in the course of circulation, and in that way would have obtained it, if he could have got it; because the trouble and expense of taking it out in the way of issue, reduced as it is to the lowest term, will always be something; and in the way of circulation he obtains it without either that trouble or expense. The necessary consequence is, that in the ordinary state of the market, there must exist at all times a disposition to receive a greater quantity of this article than is ever found in it.

The practice of taking out annuity notes can never have become *general*, without the practice of *receiving* them in the course of circulation having become *universal*, and the disposition so to receive them have grown

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into a confirmed habit—a habit as determinate as that which engages a man without reflection, without thought or deliberation, to receive bank paper, as he would gold.

The value of these notes would be depreciated or destroyed, if the taxable powers of the nation were to such a degree exhausted as not to suffice for the payment of the whole of the annuities with which it stands chargeable, and consequently not for the whole of this proposed branch of annuities. If the whole island became a province of France, or were swallowed up by the sea,—if the globe of which it forms a part were carried off by a comet, were frozen, drowned, or burnt.——But we have no need on the present occasion to take any account of any of these calamities, and *that* not so much on account of their improbability, for there is not one of them that can be pronounced impossible, as because, bank paper being the assumed standard of comparison, any one of them would be equally fatal to the credit of such paper.

CHAPTER V.

FINANCIAL ADVANTAGES.

THE advantages of a financial kind that may be expected from the proposed measure, will require to be distinguished according to the *periods* or stages above marked out, in regard to the progress of it.

§ 1. *Period First,*

From the opening of the first issue of annuity notes, to the arrival of the 3 per cent. stock annuities at par.

The branches of profit or advantage that may be looked for in the course, or at the conclusion of this first period, may be stated as follows:—

1. Profit on sale by the difference between the price for which a 3 per cent. annuity, as secured by an annuity note, is sold, and the price at which an annuity to the same amount, as secured by an entry in the books of the stock annuities, is bought in with cash raised by the above sale; in a word, profit by difference between the selling price of note annuities and the buying price of stock.—*N.B.* This branch of profit ceases altogether on the termination of Period I.*

2. Profit by interest forborne to be received on annuity notes.

3. Profit by notes in hand;—profit by interest on annuity notes received by government in the course of circulation, while kept in the hands of government.

4. Profit by notes lost under circumstances which either do not admit of, or do not call for compensation.

5. Profit by reduction of the rate of interest paid by government for such money as it is in the habit of borrowing by annual anticipation, by the issue of exchequer bills.

Profits peculiar to Periods II. and III.

6. Profit by saving upon the expense of management.

7. Profit by fractional interest; *i. e.* by the 7d. per £100, the difference between the £3 per cent. yielded by stock annuities, and the £2: 19: 5 yielded by £100 worth of note annuities.

8. Profit by the redemption of all stock annuities yielding more than 3 per cent., and thereupon by extinction of the masses of extra interest.

Profit peculiar to Period III.

9. Profit by reduction of the rate and quantum of interest upon the mass of the national debt.

10. Profit peculiar to a state of war; *i. e.* to those years in which money is to be raised by the creation of fresh masses of government annuities;—profit on loans: profit or saving by lessening the loss by those transactions, by raising the price of government annuities as compared with money, and thereby lessening the loss by the difference between money on the creation and sale of government annuities, and money paid on redemption of the same.

11. Profit by yearly interest instead of half-yearly—a profit mentioned as being obvious, and capable of being realised, but not (it is supposed) to advantage.

If to prove the proposed measure to be an advantageous one, and advantageous to a sufficient degree to give it a claim to be carried into practice, it were necessary to prove the quantum of the advantage, or even to give a calculation that had pretension to exactness, its chance for adoption would be weak indeed. Happily for the plan, no such proof can reasonably be required:—whether the profit be £10,000,000, or no more than £10,000, still, although that advantage stood alone, yet supposing it to stand clear and not to be attended with any degree of disadvantage ca-

* This branch of profit will have for its accompaniment, and that, as we have seen already, an inseparable one, the effect, and that an advantageous one, of taking out of the market a mass of stock equal to the mass of annuity paper issued, although the burthen on government, in respect of the mass of annuity to be paid, remain the same. But though the effect be produced immediately and at all events, the profit resulting from it depends upon two other circumstances;—viz. the having money to raise for the creation of government annuities, and the arrival of the period which will put into the hands of government the power of bringing its annuitants to consent to a reduction in the amount of their several annuities. These constitute two perfectly distinguishable branches of profit, which will be considered in their respective places.

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pable of counterbalancing it, the conduct indicated would be just the same: it would be worth adopting, though the advantage were worth no more than £10,000; and it could but be adopted, though the advantage were equal to 100 millions.

Profit I. Profit by the difference between the selling price of a £3 a-year annuity note, and the buying price of a do. stock annuity.

This profit will depend upon the average price of 3 per cent. stock taken out of the market upon the buying-in plan, before the commencement of the period during which, these annuities being at or above par, the paying-off plan will have taken place of the buying-in plan, and the quantum of annuity-note paper issued, and thence the quantity of stock bought in with the produce of such annuity-note paper.

Profit II. The expectation of profit by interest forborne to be received, is grounded on the following proposition, viz.—That in general a man will not bestow either trouble or expense, much less both, how inconsiderable soever the quantity, in compassing an end which he has it in his power to compass to equal perfection without any such trouble or expense.

The trouble (not to speak of the expense) attendant on the receipt of the interest on these annuities, has been reduced to the smallest amount possible; because, the greater it is, the greater the danger lest, by the contemplation of it, individuals should at the outset be repelled from the purchase of these annuities. But be the reduction ever so great, still the remainder will be something; and this remainder, it may reasonably be expected, would, in the ordinary state of things, be sufficient to turn the scale. On the other hand, suppose the circulation of the paper to be once established, upon the terms on which government paper is in the habit of being received—(I speak of exchequer bills, navy victualling, transport and ordnance debentures, not to mention India bonds)—viz. the allowing for it, in addition to the amount of the principal, the amount of the interest that has become due upon it. A man, by simply paying away an annuity note upon that footing, will receive, from the individual who takes it of him, the amount of such interest, without the trouble of applying for it elsewhere.

The smaller the amount of interest or other money to be received, the greater the *ratio* which the trouble of receiving, whatever it be, will bear to it: accordingly, if there be any difference, it is in the instance of the smaller notes; and the more certainly, the smaller the note, may the dependence on this forbearance be assured.

But the disposition to forbearance will be the more steady, the more perfect and unbroken the facility of receiving the money, in the event of its being thought fit to receive it, appears to be. It is on the strength of the persuasion entertained by a man, that the amount of a banker's note which he has taken in payment would, if demanded, be paid at any time, that his forbearance to demand it is grounded.

It is on this account, that whether or no the payment of the interest upon a fresh note be deferred till after the end of the year, or be divided into two payments, the first of them to take place at the end of the first half-year—at the end of the year it seems most advantageous, upon the whole, that the *even* amount of the year's interest should be made demandable at any time.

1. In regard to the proportion of interest that would be likely to be forborne, thus much may be to be observed:—in regard to whatever portion continued to be employed as currency, the forbearance would probably be general and continual.

2. In regard to whatever part was hoarded for the purpose of furnishing *compound* interest, it could not take place. To obtain an interest upon a year's interest due on any note, it would be necessary for a man to receive that interest, and with the money take out a fresh note or assemblage of notes: a second year's interest is a year's interest, and no more, in addition to its own amount; it does not give him the interest he might have made on the amount of the same year's interest, by receiving it in the shape of money, and employing that money in the purchase of a fresh note carrying its interest; or (what would come to the same thing) by receiving it at once from the office, if upon his application the office were to furnish him with it in that shape.

3. In the case of a mass of annuity-note paper kept in hand for the purpose of income, but without any determinate plan of accumulation in the way of compound interest, it seems difficult to say whether receipt or forbearance would be most apt to take place. The purpose of receipt might be equally answered by forbearance; viz. by paying away at each period a mass of paper of an amount equal to what the whole mass had gained in value on the score of interest by that time. But this would require provision to be made accordingly in the composition of the sums constituted by the notes: and which of the two masses of trouble would be the greater,—that of making the provision in question, or that of receiving the interest at an office,—would depend upon circumstances.

In the meantime, this consideration operates as a reason for rendering the composition of the series of notes as favourable as possible to the purpose of affording interest in the way of simple circulation as above described,

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without the necessity of coming upon government for the payment of it; that is, to render the gradation of the series more regular, and the *terms* or degrees in it more numerous, than might otherwise be necessary or desireable. The more complete the series of notes, the greater the chance it has of meeting the demand of each individual with reference to this purpose.

As to the quantum of this branch of profit, the principal part — that which may be regarded as certain — will depend upon the quantity of the paper thus employed, and upon the time during which each parcel of that quantity remains in circulation. It will depend consequently on the duration of this first period.

Should this period prove a short one, the probable length of it (according to a supposition that will be stated a little further on) not exceeding two or three years, the branch of profit will be proportionably inconsiderable; but whenever it vanishes, it vanishes (as will be seen) only to make way for a branch of much superior importance. So long as stock annuities are to be purchased under par, none of those persons whose circumstances it suits to become customers for stock annuities, will, in respect of that portion of their money, become customers for note annuities, which will not be to be had but at par price. But no sooner are stock annuities arrived at par price, than these note annuities will be at least as well suited to the circumstances of the customers for stock annuities: and inasmuch as the mass of stock annuities will be lessened every day by the operation of the sinking fund, while the mass of note annuities cannot be increased without diminishing by at least an equal amount the mass of stock annuities, the owners of the continually increasing mass of money seeking to be employed in the purchase of government annuities, to serve as a source of permanent income, will have no other resource than to lie in wait for annuity notes as they pass from hand to hand, and so impound them and take them out of the circulation.

Profit III. The third head of advantage consists in the saving or profit that may be made to accrue on the score of interest upon annuity notes, which, after being received by government from individuals on the score of taxes or otherwise in the way of circulation, remain at the command of government till wanted to be re-issued.

This head of profit will again require to be distinguished into three branches: —

1. Profit by annuity-note paper lying in the exchequer.

2. Profit by do. lying in the hands of receivers of all classes in its way to the exchequer.

3. Do. by do. lying in the way of imprest in the several offices of expenditure, waiting till re-issued.

1. As to the first of these three branches of profit, what the probable annual amount of it may be, is completely out of the knowledge of the writer of these papers, but as completely within the knowledge of those to whom they are addressed: I mean in so far as the past is capable of serving as a guide to the future. Add together the 365 sums respectively existing in the exchequer on the 365 days of the year, and divide the sum by 365; the quotient will be the principal, the interest of which will thus in the course of the year be gained or saved to government, supposing the whole of the money to be in the shape of annuity notes. From this gross amount of principal will require to be deducted, the amount of that proportion of money which is upon an average in the shape of cash.

2. As to the second of the above three branches of profit, it will rest with government whether to take it into its own hands, or to leave it in the hands of the receiver.*

3. In regard to the last of the above three branches, little need be said. The money being already, in the shape of annuity-note paper, yielding an interest to government, — so long as it is in the hands of government, all difficulty in regard to the conversion of it into that shape is out of the question here.

Under the existing plan, much anxiety has every now and then been entertained to prevent this or that subordinate officer of expenditure from getting inordinate sums by way of imprest into his hands. Under the proposed plan, the money being in the shape of paper, that paper yielding its interest to government,—so long as it is in the hands of any office or officer keeping it on the account of government, though the quantity issued from the exchequer to this or that office, upon this or that occasion, should happen to be more than sufficient — in other words, to be excessive — it would be no matter; since not only the temptation to produce the excess, but even the mischief of the excess if produced, would, in the proposed state of things, be done away.

Profit IV. Profit by notes lost under circumstances which either do not admit of, or do not call for compensation.

As this source of profit will go on increasing as the quantity of annuity-note paper increases, and will consequently be inconsiderable in this first period, even at the close of it, in comparison with what it will be at the close of the second period, at which time the conversion of the whole mass of stock annuities into annuities secured by annuity notes will have been completed, — it is to the second period,

* The interest upon exchequer bills ceases when they are paid into the hands of the receivers of taxes.

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that what there may be to say in regard to this source of profit, may with most propriety be referred.

Profit V. Profit by reduction of the rate of interest paid on other government paper.

With the fall in the rate of interest yielded by stock annuities, the fall in the rate of interest paid by government on exchequer bills will at least keep pace. As to the absolute quantum of profit on this head, that will of course depend on the amount of exchequer-bill paper issued within the time: a quantity, in regard to which, any calculations or conjectures that could be given would be of little use.

Profit VI. Profit (if taken) by difference between yearly and half-yearly interest. This branch of profit would not attain its *maximum* until the close of the second period; but I have already stated that my leaning is not to assume this head of profit, and for what reasons. It may, however, be observed, that it would yield a rateable profit of £225 per million, whilst the interest upon the national debt remained at three per cent.

§ 2. *Period Second,*

From the arrival of stock annuities at par, to the redemption of the last portion of stock annuities; whereupon follows immediately the opening of the second issue of annuity notes at the reduced rate of $2\frac{3}{8}$ per cent.

1. Profit (in the shape of principal money) *by sale of notes* ceases; but, in the event of the creation of a fresh parcel of stock annuities, revives and continues till the redemption of such stock annuities.

2. Profit *by interest undemanded* will continue, and with increase. The profit above mentioned as produced by the notes in circulating hands will increase as the quantity of paper taken out with a view to circulation increases. To this will now be added the profit produced by the notes in *hoarding hands*; viz. the expelled stockholders who take this paper with a view to permanent income, as they held their stock. This branch may be termed the casual branch: it will arise out of such casual forbearances only as take place at present in the case of dividends on stock. The probable rate of it might be estimated from the course of the payments on this score made at present at the bank.

The quantity of government annuities, stock and note annuities taken together, will, it is true, be growing less and less every day; while the quantity of money capable of being employed in the purchase of them will be growing greater and greater: so that the scarcity will be growing at both ends. But inasmuch as the issue being open all the while, everybody will be at liberty to supply himself with whatever quantity of this paper he chooses, whether for the purpose of hoarding or with a view to circulation, the diminution will fall exclusively upon the stock annuities, the quantity in circulation will not be absorbed in any degree by the demand for the purpose of hoarding; and the only effect of the increasing scarcity, even when the issue is at the point of closing, will be to make the demand, and consequent emission, the more rapid to the last.

3. Profit by *notes in hand.* This inconsiderable source of profit seems likely to continue from the first period without any variation worth inquiring into. It admits of no increase from the increased amount of annuity-note paper produced by the *conversion*, that part only which is circulation, being capable of finding its way into government hands.

4. Profit by *notes lost.* During the whole of this second period, this source of profit will be on the increase; a quantity of annuity-note paper equal to the whole amount of stock annuities, being in the course of it added to the mass.

5. Profit by reduction of interest on exchequer bills. This source of profit will probably have begun to manifest itself in the course of the former period, but it is not till now that the amount could easily be submitted to calculation.* During the whole of this second period, the rate of interest will be that reduced rate towards which it will have been moving on during the first period.

This head of profit will be an enduring one. No plenitude on the part of the exchequer will warrant the disuse of exchequer bills: it would be bad economy to make and keep on foot a *perpetual* loan to a certain amount, in order to save *occasional* loans to the same amount, at the same or nearly the same rate of interest: and to keep in hand a sum in cash to the same amount, would come to the same thing. The maximum of advantage under this head is therefore what results from keeping the rate of interest on such loans from rising more than one step above the level of the rate paid on perpetual loans. Upon the adoption of the proposed measure, it would be requisite to examine whether the plan of the present exchequer bills would be the most advantageous plan for borrowing money on such temporary loans.

6. Profit by saving in the expense of *management* — *transfer* and *allowance of interest*, as between *individual* and individual, being performed *without* expense — and the expense attached to the issue, and to the payment of interest on *government* account, being defrayed in part, or in the whole by *fees*. See Ch. I. Plan, Art. 17. This profit, being a rateable profit on the amount of debt, will of course

* These papers appear to have been written in August 1800. At that time Mr. Bentham calculated the annual saving upon £6,500,000 of exchequer bills at £126,234 per annum.

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diminish in *amount*, as the amount of the debt diminishes.

7. Profit by reduction of interest from £3 to £2 : 19s. This profit results from the conversion of stock annuities into note annuities at the par price of both, which will be the price throughout this second period. It amounts to exactly 1-60th part of the interest at 3 per cent. It comes in a manner without design, the difference being the unavoidable result of the defalcation of a few fractions, which it was necessary to get rid of, in order to leave even and commensurable sums.* The amount of annual profit on this score, on each million of capital in stock annuities converted—*i. e.* on each £30,000 of interest on the said capital—is £500.†

8. Profit by reduction of interest on stock annuities at higher rates than 3 per cent. The amount of this profit might easily be made the subject of calculation.

§ 3. *Period Third,*

From the opening of the second issue at 2⅜ths nearly (viz. £2 : 7 : 5) per cent., to the redemption of the paper of that second issue;—whereupon follows immediately the opening of the third issue at £1 : 9 : 6, being a trifle less than 1½ per cent.

I. Profit by reduction from £2 : 19s. per cent. to £2 : 7 : 5 per cent.

Rate of interest on the closed issue during this period, ...	£2	19	0
Rate of the open issue, . . .	2	7	5
Difference, constituting the rate of profit by the operation, .	£0	11	7

This result constitutes the characteristic profit of this third period. The proportionable amount of it is nearly the fifth part of the interest on the mass of annuities remaining, at the commencement of this third period, viz. £5791 : 13 : 4 per annum for each million of capital of annuity notes.

II. Profit on sale, *i. e.* by difference between selling price of annuity-note paper, and buying price of stock annuities, remains as in Period II., extinct by the extinction of stock annuities;—subject to revival in the event of a fresh creation, as before.

III. & IV. Profits by interest undemanded, and by notes in hand, continue as in Period II. with little change.‡

V. & VI. Profits by notes lost, and by saving in respect of the expense of management, being rateable profits, their amount per million's worth of paper continues unchanged, but their total amount diminishes of course in some degree, as the amount of annuity notes (which, from the commencement of this third period, are the only redeemable government annuities remaining) is diminished by the operation of the sinking fund.

For some time at least, the paper of this second issue carrying but £2 : 7 : 5 a-year interest, the demand for it, with a view to *circulation*, will be more certain than the demand for the purpose of *permanent* income on the footing of stock annuities: because to the former set of customers, the whole amount of interest, reduced as it is, will be as so much *gain;* being a profit which, but for this species of paper, they would not have made—perhaps at all—certainly not in this commodious way, and by government annuities:—whereas the reduction will sit heavy on the customers for *permanent* income, who, if they continue their money upon government security, must submit to see their incomes reduced to this amount, and whose capitals to a considerable amount will accordingly, for the purpose of escaping such reduction, be withdrawn from this employment, and either laid out upon other *securities*, or embarked along with the owners in some branch of trade.

The progress of the operation may, notwithstanding, not be diminished upon the whole; for to the amount of the demand with a view to circulation, no assignable limits can be found.

Profit VII. Profit in respect of Exchequer bills. During this third period, in comparison with the second, the rate of profit will receive an increase.

For the money wanted for occasional purposes during the second period, it will (as has been seen) have been necessary to give a rate of interest one step higher than that which, by the continual emission of annuity

* Table showing the principal sums of the several notes entering into the composition of £100 worth of annuity-note paper, with their respective amounts of interest, taken from Table of Annuity, Note Currency.

Principal of the Notes.	Amounts of Interest.
£51 4 0	£1 10 4
25 12 0	0 15 2
12 16 0	0 7 7
6 8 0	0 3 9½
3 4 0	0 1 10¾
0 16 0	0 0 2¾
£100 0 0	£2 19 0

† A portion of profit under this head would arise in Period I. It will, however, reach its maximum at the end of Period II., thenceforward its amount will decrease as the amount of the debt diminishes.

‡ Profit by *interest undemanded* ceases, it is to be remembered, at every reduction, in proportion as the conversion from the paper bearing the higher rate, into paper bearing the lower rate goes on:—because, whenever a note is paid off, the whole amount of interest remaining due upon that note must be discharged as well as the principal. It follows that, in regard to the paper of such issue, the *time of forbearance* cannot date from any earlier period than the *opening* of that issue.

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notes at that rate to all customers, it was in the power of everybody to make. But the first issue being *now* closed, it is no longer in the power of everybody or anybody to obtain government annuities at that rate; since, though paper of the first issue will still be to be had of individuals, it will not be to be had but at an advanced price. The profit by the saving of this advanced price will be sufficient to engage customers to take exchequer bills, at the par price of the *closed* issue, to an amount adequate to any money that can be wanted on the footing of a temporary loan.

§ 4. *Period Fourth,*

From the opening of the third issue at 1½ per cent. nearly (viz. £1 : 9 : 6 per cent.,) to the redemption of the last portion of paper of that issue; — whereupon follows immediately the opening of the fourth issue at £1 : 3 : 8½ per cent., being a trifle more than 1¼ per cent.

Rate of the closed issue during this period, ...	£2	7	5
Rate of the open issue, ...	1	9	6
Difference, constituting the profit of the operation, . .	£0	17	11

The annual amount of this head of profit, for this fourth period, is, for each million of capital remaining in the hands of individuals, *i. e.* for each £30,000 of interest at the original rate of 3 per cent., £8958 : 6 : 8; — the total amount of profit by reductions of interest up to this period inclusive, on each million of capital, £15,259.

Profits by notes lost, and by expense of management saved, will continue as before, with little change in regard to the rate, but in respect of the total amount, reduced in course as the quantity of the annuities in question is reduced.

So in regard to profit by *interest undemanded*, and profit *by notes in hand.*

Profit in respect of *exchequer bills*, will at this period, if not before, be so far fixed, as that the rate of interest upon these temporary loans will never be higher, but more likely lower, than that of the closed issue. For although the reduced rate of the open issue should not be accepted of by the expelled annuitants of the closed issue, nor even by any more of the customers for note paper with a view to circulation; yet, for the reasons given with reference to Period III., the premium given for the paper of the closed issue will, notwithstanding, be considerable: the more so, as the drop from the rate given by the closed issue (the second issue) to the rate given by the third issue (being the issue that remains open till the very close of this fourth period) is so great. Between the two amounts in question, a profit sufficient to draw purchasers for exchequer bills cannot but find room to place itself; and the interest on exchequer bills during this period may be expected to be considerably less than £2 : 7 : 5.

§ 5. *Concluding Period.*

The precise number of reductions which the rate of interest upon this paper might be destined to experience, is what it would be too much to attempt to fix. But a picture of the last moments of the expiring debt, at whatever stage the reduction of interest may then be, may be not without its use.

It will present the profit by *interest undemanded* in an enlarged and interesting point of view: it will strike off in effect the last 10, or 20, or 30 millions of the debt; and strike off perhaps the value of a year or two or more from the duration of that load.

After the exoneration thus effected in the course of the fourth period by the reduction of the rate of interest to the £1 : 9 : 6 which is the rate given by the paper of the third issue, — is it or is it not likely that the reduction of interest should have descended lower before the redemption of the last portion of the principal of the debt?

The reduction of the rate of interest on the money that had been thus lent to government will stop short of this mark, or stop at it, or go beyond it, according to the influence which the rate thus allowed by government turns out to exercise over the rate of interest in general. That the influence which the government rate of interest has in its rising state maintained over the general rate of interest, has been considerable, is matter of known experience — though the operation of the restrictive laws which stop the rise at the point of five per cent. even on the slenderest security, has rendered the amount of this influence scarcely capable of being measured. The influence of the rate of interest paid on the debt cannot but increase with the magnitude of the debt, to which the magnitude of the mass of capital poured into the market (as will be seen) by the redemption of that debt, will be proportioned. The effect of 200 millions thus poured in cannot but be double (it should seem) to that of 100 millions, at least if poured in within the same compass of time.

The influence of the capital poured in by the redemption of the national debt at the time the reduction of the interest on that debt is going on, will (it is true) not depend solely on the quantum of capital thus poured in, but also on the magnitude of the growing mass of national capital into which it flows. But the general mass of national capital is also of itself in a rapid state of increase; and to such a degree on the increase, as to be of itself in a way to effect a reduction in the

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rate of interest in general, without any aid from this or any other factitious source. Accordingly, the factitious cause of reduction — the factitiously accumulated capital which is thus poured in by government, so far from finding any obstruction in the magnitude and *vis inertiæ* of the mass into which it flows, finds a powerful assistance in the operation of that mass, acting as it is already, in a direction tending to the same end.

If, then, while the two forces, the *natural* and the *factitious*, are thus acting in this direction, the influence of the factitious should be strong enough to bring the other to the same pace, things will continue on in the same state as already depicted in the account of the fourth period: paper of a *closed* issue, in a quantity which cannot be increased; — paper of an *open* issue, in a quantity which will be continually and rapidly on the increase, till, by the produce of it, the paper of the closed issue has been paid off, when a fresh issue will be opened, at a still lower rate, and the *now open* issue *closed*, and so on: always paper of two issues, at two rates of interest, till the last applied portion of redemption money comes and sweeps them both out of the market at once.

If, then, the reduction of the rate of interest go on to the *last* year of the debt without stopping, the state of the paper during that last year, in respect of its being divided into paper of two issues (viz. a closed issue, and an open one,) will be the same at that supposed last period of the existence of this paper, and of the redeemable part of the national debt, as is exhibited in speaking of the advantages belonging to the fourth period of its existence: the paper swept off by the last mass of redemption-money will be paper of two different issues.

On the other hand, if the emission and consequent reduction have stopped anywhere, there will, at that last stage, be but one rate of interest paid by government on the redeemable part of the debt: the annuity-note paper remaining at the time will be, all of it, of the same issue — viz. the then closed issue: — there being at that time another issue *opened*, but no paper of that proffered issue in existence, — nobody having purchased any *at* that price.

For illustration's sake, let the last issue which meets with customers be the abovementioned third issue, — the issue at £1 : 9 : 6, with the opening of which the fourth period commences: let thirty millions, at this time, be the amount of the whole remainder of the debt, of which let ten millions be the amount of the paper of the second issue now closed, bearing interest at £2 : 7 : 5 per cent.: and let the other twenty millions be paper of the third, or open issue, bearing interest at £1 : 9 : 6 per cent.: and let the ten millions at £2 : 7 : 5 per cent. be all of it in the hands of persons who keep it in hand as a source of permanent income; while the 20 millions at £1 : 9 : 6, is all of it in a state of circulation more or less rapid, being all of it in hands that *took it out*, or received it with that view.

The sinking funds, taken altogether — the sinking funds present and future — being now in a condition to pay off (suppose) ten millions in the course of a year, let such payment be made accordingly. This extinction, falling of course upon those ten millions, strikes off the whole of the hoarded paper, and leaves only that part which, being in circulation, constitutes so much of the circulating capital of the country. Upon the redemption of the last parcel of these ten millions, the opening of the fourth issue follows of course, by article 22. If any purchasers presented themselves at the rate of this fourth issue (£1 : 3 : 8½ per cent.) the reduction of the rate of interest would go on. But by the supposition, no such purchaser *does* present himself. The persons who had been keeping their capitals in the shape of annuity-note paper of the second issue at £2 : 7 : 5, are, by the redemption of the remaining paper of that issue, put to their option — either to cease letting their capital lie on that sort of security, or to accept of £1 : 3 : 8½ per cent. By the supposition, they all reject the paper bearing this new and lowest rate: they will not meddle with it, not even for a time, and with a view of putting it into circulation by employing it in the ways in which they determine to employ the capital thus thrown upon their hands.

When the *two* masses of paper that had till now been in the market, are thus reduced to *one*, that one will, all of it, be in the hands of noteholders who take it with a view to circulation. For, whatever rate of interest is accepted on the footing of permanent income, there will be always persons in abundance to whom it will be worth while to accept of the next lowest rate, with a view to circulation. If, by the growth of national opulence, a rate so low as £2 : 7 : 5 appears now, is raised to such a pitch of relative value as to be worth acceptance in the character of a source of permanent income, the *next* lowest rate, though so low as £1 : 9 : 6, will be raised along with it in the scale of importance, and will become not less worth acceptance in the character of a source of such temporary profit as could not with equal security and convenience be made by any other means. And if the £1 : 9 : 6 itself come to be thought worth acceptance in the character of a permanent provision and sole dependence, the next lowest rate, though now reduced to £1 : 3 : 8½, will no more be regarded with contempt in the character of a

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source of temporary profit, than the £1 : 9 : 6 was before. If, then, the demand for annuity-note paper should stop altogether at any period prior to that of the complete extinction of the debt, it is with the customers for *permanent* income that it will stop, and not with the customers for temporary income with a view to circulation.

Compared with cash, the interest afforded by the annuity-note paper to those who take it or keep it with a view to circulation, will, be it ever so small, be so much *profit*. Compared with the preceding higher rate of interest, the reduced rate afforded by the annuity-note paper will, to those who take it, and who, to the extent of their respective capitals so invested, have nothing else to depend upon for their respective incomes, present itself as a loss to the amount of the difference.

Under these circumstances (though, for illustration's sake, the supposition has been that the fresh issue would at some period remain open without customers) it seems not very easy to abide by it. At the time the sinking fund came with its ten millions, and swept off all the paper of the second issue — all the paper that was in the hands of customers for permanent income — the demand on the part of the customers for temporary income with a view to circulation, had got no farther than the remaining 20 millions. But, under the accumulation of wealth inseparable from the state of things thus supposed, it is scarcely possible that the demand, from that class of customers, should for any length of time be altogether at a stand. If, in a twelvemonth, but a single £100 worth more than could be met with without giving such a premium as would make it dearer than the paper of the open issue, were wanted by any person for a few weeks or months, he would betake himself to the open issue.

Even in the case of the last group of now expelled note-holders, by whom this paper had been held as a source of permanent income, the supposition of their rejecting the paper of the fresh issue *altogether* appears scarcely tenable. They would still, to a certain degree, be customers for annuity-note paper, though with different views: *before* their expulsion, for the purpose of *permanent* income—*after* their expulsion, for the purpose of *temporary* income, till a better income or better prospects could be obtained from some other source.

True it is, that by the paper taken out of their hands they made £2 : 9 : 6 a-year; while by the paper of the fresh issue they would make not half the money — £1 : 3 : 8½. But £1 : 3 : 8½, which they might begin making from the very instant of their expulsion, would be £1 : 3 : 8½ better than nothing — which is what the interest of a considerable part of their 10 millions of capital would be reduced to, for a time more or less considerable, if it rejected this accommodation. And though no more than a single £100 of the expelled 10 millions were to betake itself to this employment, though it were but for a day, from thence would be to be dated the birth of the paper of the fourth issue.

If, however, at the period in question, there remain no paper but of one issue, it is all of it (as we have seen) in the hands of the customers for temporary income with a view to circulation, who would, generally speaking, betake themselves to the *circulation* for the interest of it, — upon which, the *demand* for interest at *the office* would nearly cease. But the same cessation might take place although there were to be paper of two issues — and would take place, if the paper of both issues were to be in the hands of the customers for temporary income with a view to circulation. Nor is this any more than what might well enough take place; since the paper of the closed issue would bear a premium corresponding to the superior rate of interest it afforded;* and it would be seen by government to be the case, if the interest upon the paper of the closed issue were seen to remain undemanded.

In this state of things, many millions of government paper still in circulation, and little or no interest demanded on it, there seems nothing to be gained and something to be lost by carrying the redemption any further. As to so much interest as continues to be undemanded, the debt *ceases* to be a burthen; — the taxes, from which the redemption money would have to come, would be a burthen; and the paper taken out of the circulation by the redemption would be so much taken from the mass of circulating capital — as much so as if gold to that amount, after having been received by government on the score of taxes, were to be thrown into the sea. A defalcation made to any such amount as the supposed 20 millions in the course of two years, might, by its suddenness, be productive of inconveniences such as it would not be easy to estimate;†—similar, in a word, to those which have been attributed to the diminution in the quantity of Bank of England paper in circulation.

Were the redemption thus to cease, it might be of use to declare, at the time that such cessation were declared, that from thence-

* The premium is a necessary condition of the co-existence of two papers of the same denominative value, bearing different masses of interest: a man would never give £100, or the value, for a mass of paper called £100, and yielding £1 : 3 : 8½ a-year interest, if for the same price he could get a mass of paper which, though called but £100, yielded £1 : 9 : 6 a-year interest.

† See further, Chapter VI. *Advantage by addition to National Capital.*

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forward, as often as a note were sent in for payment of interest, interest and principal should be paid together,* as is the practice at present in the case of exchequer bills; and at the same time to declare a respite of the redemption for a certain time.

The advantages would be —

1. The continuance of the source of profit in question (profit by interest undemanded) would be more steady and assured. For in proportion to the length of the respite declared, the paper thus respited would come to bear in circulation a premium; the amount of which premium, though *limited* by the rate of interest yielded by the open issue (resorted to or not resorted to) would not be prevented by it from taking place. This premium a man would lose, by sending in his paper to be paid off at par: in general, then, paper would not be sent in for that purpose, nor consequently any interest be paid by government.

2. No payment could thenceforward be made upon the proposed paper, but that a payment to a far greater amount would go in redemption of principal; whereas, without such regulation, no part of the money paid could take that profitable course.

The undemanded interest (it might be thought) might in this way come to accumulate to such a mass as might be productive of inconvenience, if by a sudden turn of affairs it were to become a matter of advantage to the whole body of annuitants to claim payment of it at once. But on a second glance, the inconvenience would be seen to vanish altogether. Supposing, as before, the amount of the paper twenty millions — rate of interest £1 : 9 : 6; — the whole amount of a year's interest would thus be short of £300,000. Being *simple* interest, not *compound*, the whole amount of it in twenty years would be short of six millions, supposing the whole of it to remain undemanded, and the principal undiminished all that time. No issue can carry more than its own interest; because, as the open issue fills, the paper of the closed issue is paid off, interest and principal together. *Respite* is indeed proposed; but the term of respite need not be so long as to preclude government from providing such a course of redemption as should ward off any inconvenience that might ensue from a too sudden diminution of this part of the currency, and at the same time prevent the interest from swelling to any such amount as to become formidable. At the worst, at such a period, interest so low, money so abundant, £6,000,000 would be but a trifle to raise by an immediate and temporary loan, as now by exchequer bills.

* By this restriction, the amount of the premium might perhaps be made less than it would have been otherwise: — but this would comparatively be of little moment.

§ 6. *War Loans.*

By so many per cent. as the market price of old annuities is raised by any cause, by so many per cent. (it is well known) is the price of new annuities raised to those who give money for them to government (*i. e.* the terms of the loan bettered) by that same cause: — since, as between old and new the value is just the same, it would be in vain for any man, or set of men, to insist upon any considerably greater price in annuities for their money (allowance made for depreciation by increase of quantity and for dealer's profit) than people in general are disposed to take for theirs.

Whatever takes *stock* out of the market, without taking out or keeping back the equivalent in *money*, adds in proportion to the price of stocks. The proposed measure takes stock out of the market without taking out or keeping back money: it therefore adds in proportion to the price of stocks.

True it is, that even previously to the absorption of stock annuities which it takes out of the market, it has created other annuities to a considerable part of the amount; for it is only with the money received for those *new* annuities, that the *old* are taken out. But of the money thus received for the new annuities, there is not any part that would have gone to market for old annuities; because, while stocks are under par, no money that can be employed with advantage in the purchase of stocks, can be employed otherwise than to a manifest disadvantage in the purchase of the inferior rate of interest afforded by the proposed note annuities.

Any melioration thus produced in the price of stocks, and thence in the terms of the loan for any given year, will operate (it should be remembered) not only on the loan of that year, but on all succeeding loans during the existence of the existing debt; since, whatever additions the debt may come to experience in the course of any number of succeeding years, it will always be the less by the amount of all the defalcations that have been ever made from it.†

Were it not for the operation of the *sinking fund*, the profit on this account would be so much clearer; but inasmuch as, to the extent of the stock purchased in the year by that fund, government loses exactly as much as it gains on the stock sold in that same year in and by the loan, the amount of the loss by

† This, though so evidently true as to appear little better than nugatory, will be apt enough to be overlooked, or even appear disputable: for such will naturally enough be the case, if, after rising the first year of the application of the given cause of elevation, stocks should, in consequence of fresh causes of depression, experience a fall the next, or any other succeeding year.

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the *purchase* will be always to be deducted from that of the *profit* by the *sale*.

To calculate the probable amount of profit on this score, for one, two, or more years, would require two sets of *data*; — viz. 1. Amount of the several other *causes* of *elevation*, together with those of *depression*, in each year; — 2. The amount of *annuity-note paper sold* in each year. The former would scarcely yield to calculation; the latter bids defiance to it altogether.

CHAPTER VI.

ADVANTAGE BY ADDITION TO NATIONAL CAPITAL.

AMONG the advantages promised by the proposed measure, may be reckoned the addition it promises to make to the mass of national productive capital, and thence to the mass of national wealth; viz. by the acceleration it will give to the operation of the existing funds, in respect of the redemption of the national debt.

That an addition to the mass of national capital — an addition to the value of £100 — is the result of every £100 paid in discharge of the national debt, is a proposition which, though hitherto it seems to have engaged but little if any attention, will be assented to almost as soon as mentioned. That the putting of money into men's hands on this occasion in lieu of the income they are obliged to part with, has no tendency to increase the ratio of the amount of money expended in the way of *prodigality*, to that of the money expended and employed in the way of *thrift*, is evident enough. But if, employing the money put into his hands in lieu of a source of income of which he is deprived, a man employ it otherwise than in the view of making it productive of a mass of income to equal amount, he employs it in the way of prodigality; and if he employ it with the view of making it productive of income, it must be either by expending it *himself* in the production or improvement of such articles as constitute a mass of *capital* to the amount of such expenditure, or by lending it directly or ultimately to somebody else, by whom it will be applied to that same purpose.

If the money thus put into the hands of the expelled annuitant in lieu of his annuity were taken from the mass employed in the shape of *capital*, there would be neither loss nor gain by the operation, on the score of addition to the mass of national wealth.*

But the money thus employed by the existing sinking fund is *not* taken from any such mass. It is the produce of *taxes* — of taxes levied on income, either directly or through the medium of expenditure, and is taken out of that fund, the whole of which (after a small deduction on account of savings) would otherwise have been expended within the year, in the way of *current expenditure*: that is, in the purchase partly of unproductive labour, such as that of servants, coaches, horses, players, musicians, and the like — partly in the purchase of articles consumed mostly within the year, or some other such short periods of time, without having produced any equivalent increase.

Of the money thus put in the shape of capital into the hands of the public creditors on the redemption of their respective portions of the public debt, that part which is received by *British subjects*, will *in general* be employed in adding to the mass of capital contained within the limits of the British empire: on the other hand, that part which is received by *foreigners*, will as naturally be employed in adding to the mass of capital contained within the dominion of the states to which they respectively belong — in adding to the quantity of *foreign*, not of British capital.

Deducting, then, from the whole amount of the money payable on the redemption of the redeemable, but unredeemed portion of the funded debt, that part of it which is in the hands of foreigners, the remainder will be the sum that, in the year in which the last portion of the debt comes to be redeemed, will have been added to the mass of national capital from this source, independently of any effect produced by the proposed measure.

Whatever amount of profit the proposed measure may be attended with, this profit being also applied in aid of the other sinking funds to the redemption of the debt, will act in acceleration of that effect. It will therefore, in proportion to the acceleration, be productive of a distinguishable addition to the mass of national capital in proportion to the acceleration thus produced by it. In a rough way, the amount of this addition may be

* This supposition is actually realized in the case of money employed in the redemption or purchase of portions of the land-tax, and laid out in the purchase of masses of stock annuities on government account, to be added to the sinking fund. The money for a purchase of that sort cannot be supposed (unless here and there by accident) to be saved out of the income of the year, and defalcated from what would otherwise have been the unproductive expenditure of the year, unless in the case where, without any such call, a sum to the same amount would have been saved, and employed or lent out in the shape of *capital*. It is therefore so much *taken from* the mass of national capital: — on the other hand, when handed on to the stockholders of whom the stock is bought, and in payment for their stock, it is *then* so much *added to* the mass of national capital; being so much which would not have taken that course, had it not been for the measure. It therefore leaves the amount of national capital where it found it.

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stated as equal to the interest at compound interest, at the rate at which the national capital is accumulating, upon the amount of the debt redeemed for the term of years struck off by the acceleration.

From the amount of *restitution* * thus made to capital, in any accurate computation would come to be subtracted that proportion of the national income, which, had it not been taken by taxes, and thence in the shape of redemption money added to capital, as it were by force, would have been saved up, and, without changing hands, have gone to capital of its own accord, and from the amount of profit by acceleration of the redemption of the debt, a similar proportion of the amount of such profit.

To the account of the addition thus promised to the mass of national capital, in respect of freed capital, and such other parts of the mass as are of an *intrinsically productive* nature, it may naturally enough be expected that I should add the augmentation promised in the shape of *circulating* capital; — viz. to that branch of it which consists of money.

That in certain circumstances an augmentation of this sort would be among the natural consequences, and even, unless prevented by special care, among the necessary consequences of the measure, is a proposition, the truth of which will, I think, appear with sufficient evidence: but far from taking credit for any such result in the account of advantages, probity requires that I should give warning of it as a source of danger. To point out the means of obviating this danger, will be the business of an ensuing chapter.

* I say *restitution;* for as the amount is *added to* productive capital upon the redemption of the debt, so was it *taken from* productive capital on the creation of the debt. The case might be supposed, in which this restitution should be complete, and even more than complete. It must, however, still be remembered, that the parties into whose hands this new wealth is poured, are not the parties from whose hands the wealth expended in war was originally drawn; — that money given to A is no compensation for loss of money, of life, or of limbs to B; — that if the acquisition be made, it is made by no other means than that of the most cruel pinching; — and that if the money wrung from *pleasurable* expenditure had been added, the whole of it, in the first instance, to productive capital, instead of being consumed in misery-making expenditure, the addition to productive capital and wealth would have been so much the more abundant. It may be further observed, that from the influx, or rather reflux of capital upon the redemption of the debt, suffering and loss must inevitably ensue to those whose incomes are reduced by the fall in the rate of interest of money. But this consideration may serve to reconcile the public in general, and the parties affected by it, that such *would* have been their suffering, and still greater, had there been neither borrowing nor redeeming, but had the country been reposing all the while in a state of uninterrupted peace.

CHAPTER VII.

ADVANTAGE BY ADDITION TO COMMERCIAL SECURITY.

ANOTHER advantage expected from the proposed paper, is — the addition it promises to make to commercial security — the support it holds out to commercial solvency. It presents itself, not only as being itself exempt from those shocks to which the ordinary species of paper money are essentially exposed, but as affording to the community a remedy, and that of the preventive kind, against the disorders to which it stands at present exposed by the constitutional weaknesses of those papers.

For a property thus valuable, it is indebted to two features belonging to it. One is — the making no addition by its quantity to the quantity of cash engaged for. It is by this, that it is itself preserved from that brittleness which is of the essence of those other papers. The other is — the faculty of being employed in either of two capacities at pleasure: — 1. As a permanent source of income — like so much stock — so long as it is kept in the same hand; 2. As a circulating medium — a species of money, as often as it is passed on from one hand to another. It is by this latter feature that it is enabled to fill up whatever gaps may come to be made in the quantity of money in circulation, by a deficiency in the quantity of those other papers.

That in point of *security*, commercial wealth is liable to suffer from an excess in the comparative quantity of paper money, is a truth but too often felt, and sufficiently understood. That in point of *quantity* it is liable to suffer a kind of negative loss from a deficiency in the quantity of paper money, is a truth rather understood than felt, but equally out of doubt; because, inasmuch as every fresh £100 worth of paper money is so much added to the mass of circulating capital, to the amount of the value at which it passes, the national capital is of course so much the less for every accession of this kind which *it might* have received consistently with commercial security, and fails to receive. That by a deficiency in the quantity of paper money, commercial wealth is liable to suffer — not in point of *quantity* only, but even in point of *security*, is a sort of discovery in political economy, seemingly of very recent date.† Till the pressure upon the

† The source to which I am indebted for it, is the evidence of Mr. Henry Thornton, as printed in the several unpublished Reports of the Committees of Lords and Commons on the affairs of the Bank in March and April 1797, and reprinted in Mr. Allardyce's published Address to the Bank proprietors in the same year. In the form of a

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Bank of England in 1797, it seems to have been generally understood, that in the article of paper money, *deficiency* was the *safe* side: — but on that occasion it became apparent, that in regard to paper money of the kind in view, there is *no safe side*.

While there is stock to sell, and in such abundance, how (it may be asked) can commercial wealth be liable to suffer in point of *security* by a defalcation (which can never be a very large one) from the quantity of paper money? When by selling stock, a man who has either stock enough, or credit to borrow stock, may at any time raise as much money as he pleases: he will be a loser, it is true, by the interest of the stock sold out. from the time when sold to the time when replaced, and so far wealth suffers in point of *quantity*: but there ends the damage: *security* remains entire. Yes, doubtless; — so a man may: — but on what terms? On the terms of taking the precise amount from some one else: the deficiency is *shifted* only, not *lessened*.

Stock may be *sold for money*, and in that *figurative* sense it may be *converted* into money: — but in the literal sense, it cannot be converted into money: and it is in the literal sense that an article must be capable of being converted into money, to answer the purpose in question here. *Stock* convertible into money? Yes, in the same figurative *sense* in which *lands* and *houses* and *goods* are convertible into money — and no other. Annuity-note paper *is convertible* into money, paper-money, in the *literal* sense.

Stock is one thing — paper money (the sort at present in use) is another: — annuity-note paper, and that alone, is both in one. It has two natures, and is at all times either the one thing or the other, whichever is most wanted.*

The defalcation made from commercial security by the defalcation of a given mass of money (*cash* or *paper*, makes to this purpose no difference,) would upon examination be found greater than might have been supposed. The annual receipts of the country, on the score of income and capital taken together, may (without any error capable of affecting the argument) be stated as not much over or under three times the amount of the money of the country, cash and paper taken together.† Call, then, the *quantity* of Bank of England paper *habitually* issued and kept in circulation, £10,000,000: and of that habitual 10 millions, suppose, at a *particular time*, one million cancelled or kept back, — for instance, by a defalcation to that amount from the usual discounts. Here, then, is produced already, by the defalcation of this single million from the quantity of money in circulation, a defalcation to the amount of three millions from the mass of money that should have been re-

note, the substance of that evidence would form a valuable addition to the future editions of Adam Smith's Wealth of Nations.

* It is a fact no less curious than true, that by a mere collateral circumstance, such as the *mode* of transfer appointed, and the nature of the *evidence* required in *proof of title*, the nature of a species of property, *in itself* the same in both cases, should undergo so material a change. Without a degree of expense, destructive of a part, or the whole, or even more than the whole of the value, *stock*, as we have seen, cannot be broken down into masses corresponding to those small and diversified portions into which money is and must be divided: — nor can it at any expense be either bought or sold on any occasion without loss of time, and the obligation of personal attendance at one certain place, the same for the whole island, wheresoever the residence of the parties may happen to be in each instance. It cannot be carried by a man in his pocket, and so like so much cash distributed among any number of hands, at the very instant the occasion for each disbursement arises. Annuity-note paper, like cash and Bank of England paper, but still more divisible, is already broken down into a multitude of portions still more various, and commensurate to all purposes — and, like cash, is to be had at all times and in all places.

I have a weekly bill of £1 : 12s. to pay to my baker. The £1 of it which should have come to me in bank paper, has, in consequence of the million of supposed deficiency of that paper, failed me. Can I say to him, "*Come to the bank, and I will transfer to you £1 : 12s. worth of stock?*" His answer would be — "True, £1 : 12s. is the worth of the stock you will give me to-day, but what will it be to-morrow; I have my batch of bread to mind, my journeymen to overlook, my customers to wait upon; I can find no time to go with you to the bank to-day to receive stock, another day to receive the interest, and another day to sell the stock: and if I were to receive it, what would the principal amount to when the brokerage is paid out of it? No: it would be cheaper to me to give up the debt, than to obtain payment for it on such terms."

How different would be the case, if, instead of stock, I had my £1 : 12s. worth of government annuities in the shape of an annuity note! "Here (I should say) is your money — £1 : 12s. is what I have just been giving for it: pass it to-day — everybody will give you the same sum for it: — keep it till to-morrow sevennight — anybody will allow you an additional farthing for it, and so on a farthing for every eight days, for as many times eight days as you may think fit to keep it."

† The total of national income, according to the estimate of Dr. Becke, was . £217,000,000

The quantity of national money was estimated as under: —

Gold, silver, and copper, ...	£45,000,000
Bank of England paper before the pressure of 1797, ...	10,000,000
Country bank paper, about . . .	12,000,000
Bills of exchange, by random conjecture, ...	3,000,000
	£70,000,000
To which may be added (1800,) addition by £1 and £2 notes, about	3,000,000
	£73,000,000

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ceived in the course of the year: — and this without any allowance made for the proportion of the money of both sorts (cash and paper) that will always be hoarded and kept out of the circulation in the shape of *capital waiting for employment*, or the *cash* that must always be kept up in the same way as a *fund of reserve* for answering the engagements contracted by that part of the currency which is in *paper*.

Call the amount of money kept up on both these accounts in the shape of capital, one-fourth part of the whole;—then will a defalcation, as above, from the mass of money by a defalcation to that amount from the quantity of bank paper issued and kept out, produce, instead of the above supposed defalcation of *three* millions, a defalcation of *four* millions from the mass of money receipts.

Suppose, again, that by reason of the alarm excited by this defalcation from bank paper, whatever was the cause of such defalcation, another million (cash and paper together) is hoarded up and kept out of circulation, out of the portion which otherwise would have continued in the circulation: — on this supposition, the defalcation from the mass of the year's money receipts swells, from the *four* millions above spoken of, to *eight* millions.

But it is on the quantity of money ready to be transferred to those to whom it is *due*, or by whom it is otherwise *expected*, whether out of the portion which is kept in general circulation in small masses, and which serves as a vehicle for *income*, or out of the portion kept up in large masses, in the shape of *capital*, that the body of commercial men, in their capacity of *debtors*, depend for their ability to fulfil the aggregate mass of their engagements. If, then, the influx of money in the course of the year into commercial hands be thus diminished by the amount of eight millions on the score of income and capital taken together, eight millions, or some such large sum, will be the amount of engagements *broken* in the course of that year, by reason of the defalcation of a single million's worth of bank paper (unless in as far as the deficiency may have been made up from other sources;) — and to this amount will the commercial wealth of the country have suffered, not only in point of *quantity*, but in point of *security*.

I speak of *security*, in contradistinction to *quantity*; *i. e.* to actual wealth to a *liquidated* amount; for if to the above liquidated loss be added the loss by failure following failure in consequence of the shock given to *security*, the ultimate loss may rise above the supposed eight millions, to an indefinite amount.

The want of a circulating medium as such, that deficiency, of which so much was said in 1797, may recur at any time. By the united wisdom of all parties interested, it received a cure at that time from a number of concurrent measures, all of them well adapted to the production of the effect. From true wisdom it received, for the time, a perfect cure:* but, by any other means than the sort of remedy here proposed, to prevent the evil from recurring again and again at any time, is not within the reach of the most perfect wisdom:† and prevention is still better than the most perfect cure. To be liable at any time to become the instrument of mischief, and that in either of the two opposite ways, by being in too great quantity, or in too little, is of the essence of all such promissory paper: for its not being in *too small* a quantity, it depends upon the wisdom and even humour of a few individuals; for its not being in *too great* quantity, it depends not only upon the wisdom and humour of individuals, but upon contingencies of the day, and the humours and prejudices of the uninformed and ill-informed, and hasty and impetuous multitude: upon the former, as to their not exceeding in their issues the amount warranted by the rules of

* 1. On the part of the *bank*, the extension given to the quantity of their paper — not in notes of the then usual magnitude, but in notes of the reduced magnitudes — the £1 and £2 notes; — whereby the market was enlarged to such an extent as, if given to it at an earlier period, would, it seems probable, have prevented the exigency.

2. On the part of *government*, the suspending to a certain degree the action of the restrictive laws, by which individuals had been prevented from issuing notes below a certain magnitude.

3. On the part of the *commercial body*, by their agreement to accept of Bank of England paper, without demanding cash for it.

4. To the force of these *factitious* remedies was added that of the *natural* remedy, the return of the hoarded money of both kinds into the circulation upon the cessation of the alarm.

As no man can keep any unnecessary quantity of money by him for any length of time but to a loss, would not this natural remedy, together with the preceding one, have been sufficient?

That the exigency of the case would have admitted of the waiting for the operation of these two last-mentioned remedies, is more than I will undertake to say. But that if it would, the application of the two first might have been omitted with great advantage on another score, is an opinion that will, I imagine, be acceded to by whoever recognizes the mischief pointed out as flowing from every addition to the quantity of money, metallic or paper, in Chap. IX. *On the Rise of Prices*.

† To a theoretical glance it might be apt to appear that the lesser quantity of money might serve to convey the same quantity of annual receipts as the greater, if in proportion to the deficiency in the *quantity of matter*, the *velocity* of the circulation were to be increased. But upon examination, I do not imagine it would be found by what means the velocity would be capable of receiving any adequate increase. The natural effect of those pressures, to which such increased velocity would be a relief, is — not to *accelerate* the circulation, but to *retard* it.

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prudence — upon the latter, as to their not frustrating and setting at default all the rules of prudence, by crowding in to demand for their paper without need, such a quantity of cash as is not in existence.

The sort of promise given by bank and bankers' paper, is that sort of promise, the fulfilment of which, taken in the aggregate, is physically and constantly impossible: the promise given by the proposed annuity-note paper, is that sort of promise, the fulfilment of which, whether taken in the aggregate or in parcels, has never yet been found to fail — which possesses all the certainty that is to be found anywhere in human affairs; and which becomes less and less liable to fail, the greater the quantity of money of which it conveys the promise.

Were the proposed paper the *only* paper money, national wealth would not be liable to suffer either in point of *quantity* or in point of *security* — either from excess or from *deficiency* in the quantity of paper money in any degree; since, even without the exercise of human reason on the part of anybody (except on the part of each note-holder, in so far as his own particular interest, and that the interest of the moment, were concerned:) it would adjust itself, as it were of itself, as to what concerns the demand for circulating money, to the exact quantum of the demand: it would be *stock* one moment, and *cash* the next, whichsoever were most wanted.

In the other case, were it but one ingredient amongst others in the composition of the currency of the country, it would, as far as it went, and to the extent of the quantity kept in hand, principally with a view to income,* act as an occasional supplement to other paper money, and as a remedy of the preventive kind to whatever inconveniences might otherwise have arisen from a deficiency of that article.

Against an *excess* in the quantity of other paper money, its operation would not be quite so efficient or so manifest. But by presenting to every eye a species of paper money unsusceptible either of excess or depreciation, it would at once and at all times take the pretence of necessity from the rashness that might otherwise be disposed to hazard an excessive issue; and it would render the public in general the less disposed to accept, in an excessive quantity, a paper essentially hazardous, seeing that a paper essentially exempt from hazard was at their command, to any amount, at any time.

* It therefore would not begin to act in this capacity till after Period I.; but from thenceforward the quantity would be more than adequate to the purpose here in question in a prodigious degree.

CHAPTER VIII.

PARTICULAR INTERESTS CONCERNED.

Of the four distinguishable effects looked for from the proposed measure, that which will probably be regarded as the principal, is the degree of acceleration and assurance promised by it to the redemption of the national debt. To the accomplishment of so desirable an object in a way consistent with existing engagements, no damage accruing to particular interests has ever been considered as opposing any bar that ought to be regarded as insurmountable. That a reduction, say from £4 to £3 per cent. is a tax, and that a proportional one, to the amount of 25 per cent. upon the income of a particular class of men, is a proposition too obvious to be overlooked. Yet the design of effecting a reduction of the same sort, and that to an undefined amount, is a design rooted in the mind of the legislature, evidenced by the practice of preceding parliaments,† and by the express declarations of others.‡

The nation at large, and the stockholder, are *borrower* and *lender*. When the money is to be raised, it is the lender's harvest; and he takes advantage of the borrower and his necessities to the utmost of his power. When debt comes to be paid off, it is the debtor's turn; and it is neither unnatural nor unjust, nor illaudable, nor ought it to be unexpected, that he, by his agents, should take the like advantage.

The stockholder of the *paying-off* season is not (it is true) in every instance the same individual as the stockholder of the *borrowing* season. He is, however, either the very same, or one who, with his eyes open, and for valuable consideration, has put himself in the other's place: — succeeding to all his rights, it would be in vain to repine at the thoughts of having succeeded to any of his obligations. From a *creditor* in some cases, and on the score of humanity, *mercy* may, with more or less reason, be expected — but from a *debtor*, what *mercy* was ever looked for? The words *merciless* and *debtor* are words scarcely to be coupled with a grave face.

Expressions, however, and the momentary effect they may have on the imagination, are not the proper standards of right and wrong in this case any more than in any other. *Human feelings*, and the effect of measures upon those feelings, *do* constitute that standard, in so far as they can be *ascertained*. A stockholder is as much a member of the commu-

† In the compass of thirty-three years, viz. from 1717 to 1750, interest on divers parcels of the national debt was reduced from £6 to £3 per cent.—(Sinclair, II. p. 214.)

‡ One instance, 32 Geo. III. c. 55.

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nity — as great a part of the community — as any other man. Such as his *expectations* have been, such will his feelings be, when the event takes place. But what have been his expectations? It is from his *situation*, and that only — from the terms of the contract by which his situation in that respect is constituted — that any judgment can be formed.

Thus stands it with regard to the public creditor — the stockholder, who, on the comparative return or increase of general prosperity and opulence, has in former instances seen that part of his income reduced by one half; and who, within a period already in prospect, may be doomed, by the like cause, to a reduction to the like amount.

But in comparison with the interests of *this* vast branch of the community, what can be the amount of all the *other* particular interests put together! and in comparison with the degree of sufferance in *this* case, how trifling will be the degree of sufferance in any of those *other* cases!

The destiny of the stockholders is not hypothetical: it originates not in the proposed measure; it has been fixed and made known by the legislature, and built upon for years and years, by determinations several times repeated and brought to view, without a doubt from that or any other quarter on the head of perseverance. It is for want of means, and not of determination, that the redemption with all its consequences has not long ago been accomplished.

In comparison of *such* interests, whatever lighter interests may be found to stand in the way might therefore appear as scarcely worth a glance. But though all *particular* interests put together will not prevail for the rejection of a measure beneficial *in a superior degree* to the *whole*, yet a view of the particular ways and degrees in which they may respectively come to be affected by it, will not be without its use, were it only by way of warning of the probable *sources* and *grounds* of *opposition*, and of the nature of the obstacles which may be to be combated in the course of the exertions necessary to bring the measure into effect.

During Period I., while no part of the mass of government annuities is taken, but on terms on which the holder is *desirous* to part with it, benefit to particular interests will run along with, and probably preponderate over the damage. From the commencement of the period when the species of property in question is taken from unwilling hands, the damage, as far as particular interests are concerned, will be apt to outweigh the benefit.

The only interests that belong in strictness to the present inquiry, are those which are affected by the particular mode of operation employed by the proposed measure. The consideration of any such interests as would equally be affected, whatever other mode were employed, is foreign to the present case.

The particular interests on which it bears are of course the several interests concerned in the species of paper money already in circulation. The *parties* in question are, therefore — 1. The Bank of England; — 2. The country banking-houses; to which will be to be added (although not concerned in the emission of paper money, but on another account;) — 3. The banking-houses of the metropolis.

1. If the paper of the Bank of England should be accepted by government in payment for annuity-note paper issued at the annuity-note offices, on the footing of cash, as it is at present at the other existing government offices, the circulation of bank-notes would not (it should seem) experience any diminution from the proposed measure. It might even receive assistance, since, in virtue of the same properties by which bank paper is rendered preferable to cash for all other purposes, it will be no less so for this purpose.

Should the public in general testify the expected preference for annuity-note paper as compared with cash, the Bank, by keeping that paper as the stock in reserve to answer calls for change for their own notes, might keep so much the less cash, and derive £2: 19s. interest from a portion of their stock which at present yields them none. But the profit from the present state of things is simple and certain: the result of the proposed measure, as touching its effects upon the affairs of the company, would appear wrapped in clouds. The Bank, according to their intelligent censor, Mr. Allardyce,* have not been forward to step out of the beaten track, where the step has been ever so obvious, and increased emolument ever so certain a fruit of it: the probability, therefore, seems to be, that the plan of the proposed rival paper would not be viewed from that superb edifice but with a rival's eye.

Should damage eventually accrue to the corporation, and should the case be regarded as calling for compensation, the profit would afford an ample fund, and the situation of the party damnified is such as would render it easy to reserve compensation in a variety of shapes. But to put the public to any expense in rendering any such compensation, would be a departure from former practice. When by threats of forced redemption government has compelled the Bank to accept of a reduced rate of interest, and made a defalcation to the amount of 25 per cent. upon the greatest part of its income, compensation has

* Address to the Proprietors of the Bank, 1798.

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neither been granted by one party, nor demanded by the other.*

To government, whose own manufactory of paper money† is of no less standing than that of the bank, it will be difficult to say why it should be forbidden to follow the example of the bank, and cut down its paper into as many smaller sizes as it found convenient. To government, which for the benefit of the community at large has made no scruple of restricting the dealings of other manufacturers of paper money, it would be strange, if in the same view it were not allowable to take its own course in the manufacture of its own paper, in the management of its own affairs.

But the *resource* afforded by loans from the bank (it may be asked,) *shall government deprive itself of such a resource?* The answer is short and simple. The resource cannot be taken away by the measure, till profits have been produced to a greater amount than the fee-simple of it. Bank paper need not — would not begin to be withdrawn out of the circulation, till the paper of the country banks had been driven out of it altogether. But before this would have happened, a profit would have been made by the sale of annuity-note paper, more than equal to the usual advances made by the bank.

It is only in time of war that the resource is of any value. The quantity of money in the country will not be lessened at any rate by the proposed measure: the great and only danger is, lest it be increased too much. Upon any emergency, the same quantity of money would therefore be to be had, and always to be had only through a *channel* perhaps different, and at a rate of interest possibly, though not certainly, a little higher. At the worst, to set against the gain of the twenty, thirty, or forty millions, two or three times in the course of ten or twenty years, an extra expense to the amount of £50,000 or £100,000, might be incurred. Upon these occasions, a quantity of money might come to be raised upon bills in the nature of exchequer bills, under powers previously and regularly obtained from parliament, instead of being raised by treasury bills without powers from parliament.

The resource, such as it is, might or might not be reduced; but at the worst, would be but reduced. Even now, profit by paper issued is but a part of the profit of the bank.

2. As to the country bankers, the effect of the measure upon their interests appears by no means clear. On the one hand, if the quantity of cash in the country be not lessened by the proposed government paper, the demand for banker's service in keeping that cash will not be lessened. Should the proposed government paper come to be universally received in preference to cash, the supply of cash kept by these banks for answering draughts may be made to assume that form, yielding £2: 19s. per cent. while kept at home, while an equal amount in cash is sent abroad in the way of discount in exchange for bills. On the other hand, the money which is now attracted to a country bank by the *nominal* 3 *per cent.* or whatever interest it is that is paid for it at present will no longer find its way thither, being turned aside by the full £2: 19s. a-year, with so many other advantages that attend the proposed paper in comparison with the paper of country bankers.

The loss, if there be any, to which this species of trader would be thus exposed, is at any rate among the slightest and least to be regretted of any to which man is exposed by the vicissitudes of trade. It is a mere cessation of gain, or rather of gain in this particular shape. A banker's capital is all in money. It is not with a banker as with a manufacturer: no loss by removal of stock, or by forced sale in the lump, and thereby to a disadvantage, to avoid another greater loss. A banker steps into his trade without trouble, and goes out of it without loss.

In November 1792 (according to Mr. Chalmers,‡) the number of country banks was upwards of 400 before the month of March 1793; according to the evidence given on the 1st April 1797, to the Committee of the House of Lords,‖ they had decreased to about 280: on that same 1st of April 1797, according to the same evidence, they did not exceed 230. If, in consequence of the proposed measure, the numbers of these banks should experience a further reduction, or were to be swept away altogether, the change is of a sort that threatens not to be either preceded or followed by *distress*. *Failure* cannot be among the consequences. The banks will have had ample warning, time for getting in their debts, and contracting their issues. Of the issue of the proposed paper, the progress, from the very opening of it, will be known day by day, the whole island over, to a penny.§ Months at any rate, not to speak of *years*, will have intervened between the first authentic mention of the measure, and the establishment of it.

From withdrawing without failure — from withdrawing, should it take place in consequence of the advancement of the proposed annuity-note paper — little damage would ensue to the few individuals particularly concerned, and none to anybody else. From fai-

* By the reduction of interest on government annuities from 4 to 3 per cent. in Mr. Pelham's time, 1749 to 1750; 23 Geo. II. ch. 1 & 22.

† Exchequer bills.

‡ Estimate, &c. edition 1794. Dedication, p. lii.

‖ By Mr. Ellison, agent to the Association of Country Banks. — Lords' Report, p. 67.

§ By Article 18, Chap. I.

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lure, as often as it happens, ruin ensues to the individuals concerned, and much mischief to the community at large. An entire substitution of the proposed government paper to the paper of country bankers, would prevent the recurrence of this mischief, and that ruin. It is no light matter—out of the four hundred and odd country banks above spoken of (according to an account taken by Mr. Chalmers,) a full fourth had failed:* of more recent failures I say nothing, having nobody to quote.

By expulsion from this branch of trade the whole body of the trade would thus be secured from failure. By the failure of a part, though it were but a tenth part, more distress would at any time be produced, reckoning that of the trade alone, than by the expulsion of the whole.

3. For the banking-houses of the metropolis, there seems less cause of apprehension than for the *country banks*. They have no paper for the government paper to annihilate. True it is, that on the one hand many persons who now keep their money at a banker's, because, by keeping it themselves, they could make no interest, would not keep their *annuity-note paper* at the banker's, if by keeping it there they could make no interest on it, while by keeping it at home they could make £2 : 19s. per cent. of it. But the inducement to keep money at the banker's does not consist solely in the consideration of *safe custody*, but in that and other advantages put together: in the saving in point of time and trouble in regard to the counting of money, and doubts and disputes about the goodness of money offered, together with the convenience of a man's having the account of his expenditure kept by other hands. For these remaining conveniences, some might be willing to waive their claims to the small and unusual gain of 2*d.* per £100 per day upon expenditure: others, though unwilling to give up the whole, may be willing to give up some part of it; and in this way a man might keep his annuity-note paper at his bankers, as he does his cash, but *upon terms;* and the profit by interest on the paper might thus come to be shared between the *owner* of the paper and the *keeper* of it. Capital sums, however, which now are in so many instances suffered, through indolence, and while waiting for a distant and undetermined employment, to lie dead to the owner at a banker's, would not be quite so apt to lie there, when in the shape of annuity notes they might be productive of interest to the owner, without prejudice to such their destination, and without any increase of trouble.

Here, then, we see two new sources of profit opened by the measure to the banking-houses of the metropolis: — 1. Profit by interest of annuity-note paper kept in reserve, instead of cash to answer drafts; and 2. Profit by annuity-note paper kept for customers *upon terms*. Suppose the quantity of cash in the metropolis to be undiminished by the measure, the amount of the above profits will even be *neat*. *Will* it remain undiminished? The affirmative seems highly probable.

Among the effects of the measure is one, that to a certain degree cannot fail to increase that quantity. The cash which now remains, and would otherwise have remained in the hands of the frugal poor — in unproductive hands, being now poured into the hands of the commissioners for the redemption of the national debt in return for annuity-note paper, will be restored to the circulation, and add to the quantity put into the hands of bankers.

* Estimate, &c. ib. 62.

CHAPTER IX.

RISE OF PRICES — HOW TO OBVIATE.

I HAVE already stated an extra rise of prices as among the *conceivable* results of the proposed measure. Taken by itself, it is evidently an *undesirable* result: it is a tax on income to the amount—a tax which comes out of everybody's pocket, and goes into nobody's. Being, with reference to the proposed measure, an unfavourable result, I may be believed with the less difficulty when stating it as a probable one.

Supposing the *influx* of the proposed paper not to be followed, or rather kept pace with, by an *efflux* of other money to an equal amount; and supposing it too *sudden* to be productive of an influx of vendible commodities, to an amount worth regarding in this view, within the assumed space of time; the result presents itself as a demonstrable one. For the price of the whole mass of vendible articles taken together, sold within the year, is, in other words, the same thing as the quantity of money given or undertaken for in exchange for them within that time; so that the quantity of those articles remaining the same, the greater the quantity of the money is that has been given for them, the higher has been the price.

It has already been observed, that it seems impossible to say with any precision to how small or how great a length the emission of the proposed paper may eventually be found to extend previously to the arrival of stock 3 per cents. at par: That, at some part or other of that interval, a small quantity at least can, however, scarcely fail to find acceptance; and that a small quantity, a very few millions for example, issued previously to the conclusion of it, would be sufficient to operate the conversion indicated, and thereby give the form of the proposed paper to the whole of the remaining mass of annuities composing the national debt: That, although the quantity of that species of property will be continually

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and rapidly on the decrease, while the demand for it will be as continually and rapidly on the increase, it will nevertheless be difficult, if not impossible, to prescribe any determinate limit to that portion of it which in this way may come to have introduced itself into the circulation, on the footing of *current money;* for the open issue will remain equally open to the customers for *temporary* income (who, when they have kept it as long as they can afford, will throw it into the circulation) as to the customers for *permanent* income; and it seems impossible to say in what proportions, at any given time, the quantity of annuity-note paper remaining at that time, will find itself distributed between the two classes.

On these considerations, it will be matter of prudence to be prepared for the several possible cases and degrees in which it may happen to constitute a clear addition to the mass of money in circulation, to any such amount as to be in a sensible degree productive of the apprehended inconvenience.

Of such preparation, the practical result will be, to take such measures as shall be effectual for the prevention—not of the rise of prices, which is impossible—but of any addition to that degree of rise, or rate of increase, which would have taken place in the natural course of things, independently of the proposed measure.

If after having expelled of itself the whole amount of paper money of other sorts, it were to keep on increasing without expelling metallic money to an amount equal to its own, it would thenceforward, if not restrained, make a proportionable addition to the quantity of money of all sorts in circulation, and thence to the prices of vendible commodities. In this case, it would be necessary to apply the check to the proposed paper itself, by limiting the quantity that should be suffered to enter into the composition of the mass of money in circulation: for example, by stopping the issue of all annuity notes below a certain magnitude; say, for instance, the £102: 8s. notes. By an expedient thus simple (the requisite powers being given to the executive government *ab initio*) the end might be accomplished, in the possible event supposed, without any fresh interference on the part of the legislature. That the means thus proposed would be adequate to the end, will appear clear enough (it is supposed) from what has been said on this subject in a former Chapter.*

That in proportion as the proposed paper advanced in circulation, country bankers' paper and Bank of England paper would quietly withdraw themselves, is a result that appears more probable than the contrary, according to what has already been observed.†

Should it fail of taking place in the requisite degree of itself, it would require to be produced by means directed expressly to that end.

The first of the two species of paper attacked, would naturally be the paper of the *country banks.* Collectively modern, individually changeable, they have no such claims on government as those which plead in favour of the great incorporated bank.* Express *prohibition* would not be necessary: by *taxation* the same effect precisely might be produced—by a simple extension of a tax already imposed for other purposes. By this means, if necessary, about half the utmost possible amount of the supposed redundant mass of paper would be chased away.†

Secondly, and lastly, would come the paper of the *Bank of England.* In this case, as in the other, the same means would be sufficient to the same end. Perhaps, however, in this case, they would not be necessary. A simple refusal on the part of government, to receive at its own offices any other than its own paper, might be adequate to the effect.‡

It may be asked—to what end throw the whole burthen of the measure upon the two particular classes in question, instead of letting it spread over the community at large in the shape of a rise of prices?

My answer is—to reduce the amount and pressure of it to its minimum. At an estimate greater than any possible one, the former loss would not be to the latter in so high a proportion as that of interest to principal. To the banking class, it is not clear (as hath already been shown) that the loss would in fact amount to anything. But put an extreme case, and take it, in the instance of each individual, at the utmost possible amount it could rise to in the instance of any one. Call the total amount of bank and bankers' paper 25 millions,‖ and upon the whole of this paper suppose a real profit of 5 per cent. annually made. Upon a supposition in a variety of points thus excessive, the total loss is but £1,250,000 a-year. Call, on the other hand, the total quantity of money of all kinds taken together 75 millions; §—and suppose (according to the position brought to view at

* Chapter IV. *Grounds*, &c.

† Chapter VIII. *Particular Interests*, &c.

* The case of the incorporated banks of Scotland does not appear to differ materially in this respect from that of the incorporated and unincorporated country banks of England.

† By the tax upon country bankers, government has already taken to itself a share in the profit on that paper. In so far as country bankers' paper came to be extruded by the proposed government paper, the profit by this tax would fall of course to be deducted from the sum total of profits promised by the proposed measure.

‡ In this case, nothing would be receivable at the annuity-note offices but cash.

‖ The estimated amount of bank and country bankers' paper in 1800.

§ The estimated amount of money of all kinds in 1800, nearly.

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the commencement of this chapter) that the addition made to the prices of vendible commodities, taken together, is in the exact proportion of the supposed sudden addition to the mass of money; viz. as 25 to 75—as 1 to 3. On this supposition, the rise of prices being supposed equable, and therefore universal, every income which did not receive a rateable increase from the supposed sudden influx of 25 millions, would in effect be diminished by a fourth—the whole income of a man so circumstanced producing him no more than three-fourths of the quantity of vendible commodities it produced to him before. Call, with Dr. Becke, the annual income of the country (including income from day labour without stock) £217,000,000—or for round numbers £210,000,000; then will the annual burthen on the country, by rise of prices on the non-expulsion of the paper money in question, be £70,000,000.* *Per contra*, the utmost possible annual loss to the bankers and bank proprietors by the expulsion, not so much as £1,250,000; the probable loss, scarcely so much as the odd £250,000.

The amount of the loss would, it is true, be made good in money, in a certain degree, to every person whose circumstances enabled him to make in money an addition to his income equal to the degradation thus sustained by it;—for although the real value of the total mass of money—its value in respect of the quantity of vendible commodities it purchases and conveys—is not greater after the supposed addition to the mass of money, yet on the other hand, neither is it less. The misfortune is, that although the pressure from the defalcation would be felt in all its force—and felt by all parties, indemnified as well as unindemnified—the indemnity would in comparison be scarcely perceived. The loss by the rise of prices would be felt as so much loss:—the gain by the share in that extra influx of money by which the loss had been produced—this gain not being coupled and set down *per contra* in the mind of the party, and confronted with the loss, would present itself in the shape of an independent gain, unconnected with any such effect:—and by an indisputable law of the sensible faculties of man, sums and circumstances equal, the enjoyment produced by gain is never equal to the suffering produced by loss: if it were, the main reason for affording protection to property would cease.

That an increase in the quantity of real wealth, *i. e.* of vendible commodities, has been produced by an increase in the quantity of nominal wealth—viz. current money, cash and paper together—seems by no means clear of doubt. But what seems not exposed to doubt is, that the quantum of such addition, if real, accruing in the compass of a year, cannot amount to more than the produce of the fresh quantity of unemployed capacity for labour brought into employment by the application of a proportionable quantity of the supposed fresh influx of money over and above that which would have been brought into employment:—so that if at the commencement of the year all hands capable of employment were full of employment, and so would have continued during the whole course of it, no addition could in the course of that time be made to the quantity of real wealth or vendible commodities by the influx of the money in question, howsoever copious. But whatever quantity of money being introduced into the circulation has not the effect of producing a correspondent quantity of vendible commodities, cannot but have the effect of producing a correspondent degradation in the value of the existing mass of money into which it flows, thereby producing, what is in truth no more than the same effect expressed in other words, a correspondent *rise of prices*.†

* Upon the whole, then, the result is, that by every £100 worth of paper issued by a banker, he imposes a tax upon the community, and that to an amount prodigiously greater than that of his own profit.

CHAPTER X.

REDUCTION OF INTEREST—PROPOSED MODE COMPARED WITH MR. PELHAM'S.

REDUCTION of Interest is a declared object with Parliament:—the only question is as to the *mode*.

To exhibit the comparative eligibility as between the two plans—(the one here pro-

† For example, let £6,000,000 be the quantity of extra influx money introduced into the circulation in the course of the year;—let the quantity of extra labour produced by this extra influx be equal to full employment for 100,000 fresh hands: the allowance would be perhaps sufficient as applied to the whole amount of fresh labour produced within the year by all causes, the existing quantity of money, and the supposed extra quantity taken together:—applied, therefore, to the latter alone, it will be excessive. It is not a matter of necessity that any addition at all to the mass of vendible commodities shall have been produced by the extra influx of money, since a particular application of the existing quantity of money in the country, without any accession to it whatsoever, is altogether adequate to the producing the utmost possible degree of accumulation. (But for illustration's sake, the supposed state of things may serve as well as if it were more correct.) Call the average value of the produce of the labour of these 100,000 fresh hands 12s. a-week for each: this in round numbers will be £3,000,000 a-year. £3,000,000, then, is the quantity of extra influx money remaining, the efficiency of which is spent altogether in degrading the value of the mass into which it flows, and producing the correspondent rise in the price of vendible commodities.

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posed for the future, and the one pursued in time past by Mr. Pelham) — I shall consider them together under the several heads of *expense* — *celerity of operation* — *previous assurance of success* — and *gentleness of operation:* — not forgetting, with respect to Mr. Pelham's, the possibility of applying it at the *present time* to the immensely increased mass of debt.

I. As to *Expense* — viz. as compared with profit. — In Mr. Pelham's time, the profit consisted in reducing to 3 per cents. the whole amount of the then existing quantity of 4 per cents.; that is, reducing the quantum of interest paid on the nominal capital of £57,703,475, from about £2,308,136 to about £1,731,102.

When the operation was first mentioned by him in parliament, it was a sign that *then* at least the state of the money market was ripe for it; otherwise he could not have obtained the requisite assurance of the money for paying off in case of refractoriness: — how much longer it might have already been ripe, it would be in vain to attempt to calculate. This being assumed, whatever respite he allowed — whether as to the whole or as to a part of the interest proposed to be struck off — is to be considered as a price, or *bonus*, which under the plan proposed it was looked upon as advisable in point of prudence to allow to the stockholders, in order to purchase their acquiescence, and insure the plan against the hazard of failure. I say, to prudence; for as to sympathy for the sufferings of the individuals damnified, the professedly vindictive measures pursued afterwards against the *repugnants* are a sufficient proof that no such motive was consulted in the arrangements of the terms.

1. A year's interest was allowed in the first plan without reduction; — *i. e.* the amount of the one per cent. that was to be afterwards struck off by the reduction, £577,034, was allowed for the first year.*

2. Half of the one per cent. ultimately struck off was allowed for seven years more. This for one year was £288,517; — for the seven years £2,019,619. Adding the one per cent. for the first year, makes the total price paid for consent, £2,596,653; — deducting £426,980 discount for the several years to come, leaves the amount of the money paid for the £577,034 a-year thus saved, £2,169,673.

This £2,169,673 (thus paid for consent to the reduction) amounts to a little more than 1-27th of the amount of the capital of £57,703,475, upon which the reduction of the 4 per cent. to 3 per cent. was thus effected: a little less than £2,308,136, which would be the exact amount of four year's purchase of the perpetual annuity thus struck off. Such, then, was the price that on Mr. Pelham's plan was given for a consent, which upon the proposed plan would be obtained *gratis*.

On the proposed plan, the quantum of interest that would be struck off by the first reduction (meaning the reduction effected in the course of the two first periods, by conversion of 4 and 5 and 3 per cents. into capitals bearing £2: 19s. per cent.) by means of the paper of the first issue, would be £1,212,608.

That, upon any proposed reduction to be effected at this time of day, the same terms precisely should be offered as were offered at *that* time of day, would, under the vast difference of circumstances, be a supposition altogether untenable; but as it would be a fruitless attempt to determine what *would be* the terms now offered, the only terms on which any argument can be grounded are the above.†

On that supposition, the price to be paid for a consent to the striking off a mass of permanent annuities to the above amount of £1,212,608 a-year, would be a little less than four times that sum: it would be £4,559,458: exactly four times would be £4,850,432.‡

3. A sacrifice which may be added to the expense attending the reduction of *interest*, as above, is — that of going on with the redemption of the principal of the debt. By Mr. Pelham's plan, this latter mode of liberation was given up: even in point of right, for eight years — and in intention, perhaps for ever. Since the establishment of the existing sinking funds, it could not *now* be given up upon *any* terms; and supposing it possible, and deemed eligible, to adopt the principle of Mr. Pelham's reduction plan to a certain extent, it could not be adopted without such modifications as would be necessary to render it compatible with the institution of those redemption funds.

On the proposed plan, reduction of interest and redemption of principal afford assist-

* This, it may be thought, should not be considered as constituting part of the *bonus*, inasmuch as in some of the acts, and probably in all the acts prior to that date, it will be found that a year's notice previous to redemption was among the stipulated terms. On the other hand, if instead of waiting for meditations and negotiations, and observations to be taken of the times, a plan had been adopted in the first instance, such as (like the proposed plan) would have given the public the benefit of the reduction from the instant that the rise in the rate of interest in general, and of money in the funds in particular, had rendered the commencement of it practicable, the probability seems to be, that the extra interest, not only of the year in question, but of one or more preceding years, might have been saved.

† Written 1800.

‡ As £577,034 is to £2,169,673, so is £1,212,608 to £4,559,458.

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ance to each other: reduction to redemption, by the supplies it pours into the fund; — redemption to reduction, by the sums which, by expelling them out of the old annuities, it drives into the new.

4. Another sacrifice that would be to be made upon Mr. Pelham's plan was — of the eventual advantage of ulterior reductions: — the very *right* given up for eight years as before — and for any subsequent period, no foundation laid, nor prospect opened, for anything that appears.

On the proposed plan, issue follows issue — reduction, reduction — as wave follows wave, — execution treading without respite upon the heels of possibility. What space of time each reduction would occupy, is scarcely open to conjecture: — thus much is certain, that there is not a moment's interval between the completion of one reduction and the commencement of the next.

II. *Celerity of Operation* constitutes a head of comparison different in name, but in effect carried to account already, under the head of *Expense*. A given sum is worth the less, as the time for receiving it is more distant. *Acceleration* is *profit* — *retardation*, *loss*.

III. *Previous Assurance of Success.*

That Mr. Pelham's plan was practicable, was proved by the event. But for a long time it was likely to have failed: and had it failed, it would have failed *in toto;* since, if the reduction had not been submitted to in respect of nearly the *whole* mass, it could not have taken place as to any part. Had not the quantity of *uninscribed* stock (about 3¼ millions) been small enough to admit of its being paid off, the submission, testified in respect of the *subscribed* stock, could hardly have been accepted: nor could the plan have taken place in any degree, without a joint and simultaneous operation on the part of one or other of two numerous sets of parties — viz. the *stock* holders, who were called upon to submit to the reduction — or the monied men, from whom, as far as the expected submission failed of taking place, the money was to come for paying off the *repugnants*.

But though practicable then, in respect of the 57 or 58 millions in question then, it does not follow that it would be practicable now, in regard to the amount of debt now in question, not even although stocks should arrive at par.

In regard to reduction on the proposed plan, success is, as we have seen, independent of contingencies. In each *year*—month—day, the process will go on to the utmost extent consistent with the state of the money market at that time. By the proposed *subscription* plan — by the consequent competition for respite from further deductions — the first reduction might be rendered in a manner instantaneous; and a very short space of time would be sufficient for the accomplishment of it, even without any such aid. The 5 or 6 millions (which would by that time be the amount of a year's produce of the sinking fund,) call it 5 millions—this vibrating without ceasing between the stock market and the annuity-note market, would be sufficient to dispatch the reduction, and with prodigious rapidity, although the subscription plan were untried, or tried without effect. In the machinery thus put in motion, no part is liable to stop of itself for want of the assistance of any other — and as it is at the beginning, so is it at the end.

During the first issue, every note then issued pays off by the money it produces, and thus, converts into note annuities, a corresponding portion of stock annuities. During the *second* issue, every note then issued converts in the same way, into paper bearing the reduced rate of interest of that second issue, a correspondent portion of the paper of the first issue: — and a single note thus taken out in the way of issue, would bring about the reduction upon that *portion* of capital, and in a determinable time even upon the whole capital, although not another note were ever to be issued on the same terms.

Once put in motion, the machine keeps going of itself, without any fresh winding up, so long as there remains a particle of the debt for it to act upon and cut down:—nothing is left to depend on circumstances of the moment — nothing on the humours of individuals; — no interval between reduction and reduction — no pausing, deliberating, negotiating, debating, fumbling: — nor yet is the process exposed to the charge of precipitation or excess, — government having it in its power to stop or retard the operation at any time, by stopping or retarding the influx of the *primum mobile* from the sinking fund.*

IV. Lastly, as to *Gentleness of Operation.* Of Mr. Pelham's plan, it is upon record that it experienced much opposition, and created much dissatisfaction. It was in the nature of it so to do. It brought forward the minister in an obnoxious attitude, calling upon men to

* This being so perfectly opposition-proof, is a feature by which the proposed mode of reduction stands distinguished in a very striking point of view from every other. Though this consequence of the proposed conversion were ever so clearly foreseen, by those who, either from factious motives, or on the honest ground of personal motives, were disposed to thwart it, though it were even expressly announced by government (as indeed virtually it could not but be,) it would not be in the power even of conspiracy so much as to impede it. By refusing the paper, each conspirator would make a complete and certain sacrifice of his own personal advantage, without the smallest chance of affording any sensible help to the common object of the conspiracy. Limitation only, not prevention — limitation to a degree altogether without effect—would be the utmost possible result of the most unanimous and most persevering opposition on this ground.

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submit to a loss to the amount of a perpetual tax of 25 per cent. upon income, subject only to an abatement to the amount of about four years' purchase, on the condition of their lending their hands to a sacrifice of which they were the sole victims.

Accordingly, though on the ground of justice nothing could be more unimpeachable, ill-humour on one side appears to have begot ill-humour on the other — on the part of the authors of the suffering, as well as on the part of the sufferers themselves. On those who stood out at first, harder terms were afterwards imposed; and, to judge from the debates, the professed motive was not merely economy but vengeance.*

By the proposed plan, no such invidious task is put into the hands of any one. Before anything of hardship shows itself (at least to the great class of individuals here in question — the stockholders,) the measure will have been known — known for years as a measure of universal accommodation. Every man's money will have been breeding money in his pocket — every man who has sold out, will have sold to an advantage. When hardship comes at last, it will be at the end of a long chain of causes and effects, the first link of which has been removed by time, almost out of the reach of observation. The immediate cause, being everybody's act, is nobody's. No new act — none at least that carries anything of compulsion on the face of it, is required at *this* (or indeed at *any* time) on the part of government.

On Mr. Pelham's plan, everything turning upon subscription, a man knew not but that he was subscribing to his own *loss*. On the proposed plan, the loss takes place at any rate, and the effect of a subscription is all *gain* to him. The quantity of this gain depends upon his own exertions; and the bustle of competition serves to call off his mind from the suffering which is to come.

CHAPTER XI.

MORAL ADVANTAGES.

To the head of *moral* advantages may be referred two very distinct results: — *prevention of improbity*, and *promotion of frugality*: prevention of improbity, by furnishing (as we shall see) a new *means* or *instrument of prevention*; promotion of frugality, by the offer of a new species of property, which, by annexing an unprecedented *remuneration* to the exercise of that virtue, operates at once as an *incentive* and as a *means*.

I. As to *prevention of improbity*. The class of persons in whose instance it may operate to this effect, consists of *trustees* of every description, to whom it belongs to *receive money* on account of their principals — *executors* and *administrators*, *guardians*, *stewards* and *receivers*, *assignees of bankrupts*, *prize-agents*, *factors*, and the like.

To cause *trust-monies*, as often as a suitable case presents itself, to be laid out in the purchase of government annuities for the benefit of the principals, is, in the court of Chancery, matter of long-established practice — a practice which, by an act of very recent date, has received express support from parliament. The credit of the proposed new government annuities having been previously established by sufficient experience, let a similar investment of all trust-monies, as they come in, be rendered a matter of general obligation by an act of the legislature. A *trust-receipt* book to be kept with a trust-*till*. In the *book*, an entry to be made of each sum received, with the day on which it was received; the statement of the day to be indispensable. The money, if not received in the shape of annuity notes, to be sent to the office on that day or the next, to be changed into annuity notes; the notes received to be entered by their numbers; if the day be not entered, the first day of the year to be presumed, for the purpose of charging the trustee with the interest. The trust-paper, as received, to be deposited in the trust-*till*, to save it from being confounded with money of his own. This not to prevent the disposal of the amount to superior advantage (*i. e.* at a higher rate of interest than what is afforded by annuity notes) in as far as the nature of the trust admits of it.†

What is thus proposed to be rendered *obligatory* for the benefit of the principal, is no more than what a *careful* trustee would do *spontaneously*, either for the benefit of the principal or for his own, according to the texture of his conscience. Should a precaution thus simple and unexceptionable be neglected, the institution of annuity notes will be but too apt to operate as a premium for *vice* as well as *virtue* — a premium for *improbity* in the one situation, as well as for *frugality* in the other.

* In the case of the second set of subscribers, two years were struck off from the half per cent. for seven years that had been allowed to the first set. First act, 23 Geo. II. c. 1. Second act, 23 Geo. II. c. 22.

† Since the above was written, a passage has been discovered in *Pinto*, whereby it appears that at the date of his book (1771) a law to this effect existed in *Holland*, in respect of the interest-bearing paper of that country, termed *obligations*. [De la Circulation, et du Crédit, p. 81.] There is a great deal of good and a great deal of evil (he says) in the effects of this law: but the good appears to consist in the mode of *employing* the money as above — the evil, in the *hands* in which the management is reposed, or in some other such *collateral* circumstance as the forced sale of property, in whatever other shape it may be in, besides money, for the purpose of converting it into *this*.

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II. Lastly, as to *promotion of frugality*. We have seen the peculiar advantages which the proposed new species of property holds out to the acquirer. Within a trifling and unavoidable fraction, 2d. a-day: £3 for every £100 by the year—not for *risk* of lending, but for mere *self-denial* in not spending. Income, receivable without *expense*, and without *stirring* from his home. No *attendance*, no *agency* fees, no *brokerage* fees, no *stamp*-duty, either on *purchase* or on *sale*. No loss, on either occasion, by fluctuation of price. Not a day without its profit — profit by keeping, for the *minutest* as well as for the *largest* portions of time: conveyance obtainable for it by the *post* in the *minutest portions* as well as to the most *distant parts* of the island. Security afforded by division against misadventures of all sorts — against accidents and against crimes — in the *house* or on the *road* —by fire, water, or forgetfulness—from theft, robbery, burglary, or breach of trust. *Compound interest* brought within the reach of *individuals* for the first time.

In proportion to the degree in which it presents these several accommodations, in that same proportion does it act as an incentive to *frugality*: — in *all* classes in a *certain degree*, and in as far as current expenditure is concerned; but in a more especial degree, in those humble, and at the same time most *numerous* walks of life, in which it is of most importance to prudence, probity, and happiness.*

In the existing state of the money-market, the hoards of the *opulent* are prolific and accumulating: the hoards of the *poor* alone are dead and unproductive. By the proposed measure, the condition of the *poor* in this respect would be raised to a level — in the first instance *not much below*, and in process of time (as the price of stock annuities rose, and the rate of interest obtainable by the purchase of them diminished) *altogether upon a par with*, the condition of the rich.

A result not to be viewed without regret is, that in every *period* after the *second*, and in proportion as the rate of interest afforded by government annuities comes to be reduced, the encouragement thus given to frugality will thus be reduced likewise: for though, after the reduction, the *remainder* will be *gain*, as compared with the *present* period, yet the difference will be *loss*, in comparison of the period then *last in experience*. But in the meantime, the condition of the poor in this respect will, at any rate, have been raised to a level with that of the rich, and will so continue. The habit of frugality will have taken root, and having so done, may derive strength, rather than weakness, from the increased exertions it will be called upon to make.

CHAPTER XII.

CONSTITUTIONAL ADVANTAGES.

AMONG the effects resulting from the national debt in the *early* stages of its existence, was the security it afforded to the old established constitution, by engaging the *purses* and *affections* of the *monied interest* in the service and support of the new-established government. *That* was the *great-monied* interest. In *other* points of view, the institution of that debt has found *many* disapprovers: in this it has found *none* — among those, at least, by whom the existing constitution is regarded as fit to be preserved. The advantage resulting from the transmutation of that debt into the proposed form would be — the security to the constitution and government now grown into one, arising from its engaging the support of what may be called the *little-monied* interest by the same powerful tie.

* *Frugality*, itself a virtue, is an *auxiliary* to all the other virtues: to none more than to *generosity*, to which, by the unthinking, it is so apt to be regarded as an *adversary*. *The sacrifice of the present to the future*, is the common basis of all the virtues: frugality is among the most difficult and persevering exemplifications of that sacrifice. Important in all classes, it is more particularly so in those which abound in uncultivated minds. In these, to promote frugality is to promote *sobriety*: to curb that raging vice which in peaceful times outstrips all other moral causes of unhappiness put together. In the prospects opened by frugality, the wife and children have a principal share: they derive nothing but vexation and distress from the money spent at the *gin-shop* or the *ale-house*. Compared with the *prodigal*, the hardest of *misers* is a man of virtue.

In the "*Outline of a plan of provision for the poor*," as printed in Young's Annals of Agriculture,[a] among the *collateral uses* there mentioned as derivable from the system of *industry-houses* there proposed, is that of their affording, each of them to its neighbourhood, a *bank*, for the reception and improvement of the produce of frugality on a *small scale*, under the name of a *frugality bank*. In the plan that was handed about of the then proposed *Globe Insurance Company*, since established by act of Parliament, among the uses mentioned as proposed to be made of the stock of such company, is that of carrying on the business of such a *frugality bank*, with a reference to the suggestions given in the above papers.

Were the proposed annuity-note paper to be emitted, "*Every* poor *man might be his own banker*:" every poor man might, by throwing his little hoards into this shape, make banker's profit of his *own* money. Every country cottage — every little town tenement — might, with this degree of profit, and with a degree of security till now unknown, be a *frugality bank*.

[a] See that work as reprinted in the present collection.

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The body *politic*, not less than the body *natural*, is subject to its constitutional diseases. *Tyranny* was the grand disease in prospect *then*: *anarchy now*. The danger *then was*, from a single person in respect of the sentiments of submission pointed to that person, and carried to excess: the danger *now is* from the great multitude — in respect of the disposition to unruliness which has been, and continues to be propagated with but too much success among the lower orders—among those (let it never be out of mind) of whom is composed the vast majority of the people.

If the name of *great-monied interest*, employed above for distinction's sake, be well applied, it is with reference to *money*, and by reason of the greatness of the *shares*. but with reference to *men*, meaning multitude of men — and even with reference to money, if the magnitude of the total be the object of consideration — it is the *little-monied* interest that should be termed *great*.

As the disease changes its form, so should the remedy. *Stock*, in its large doses, served for the disorder of *that* time: *paper*, in its small doses, is the specific for the *present*.*

Admirable are the remedies that have already been applied: admirable, not more for their efficiency than for their gentleness. There remains this one—and perhaps another that might be named—remedies, not less efficient, and still more gentle.

Turning to Ireland, the demand for the remedy will be found the same in kind, but much more urgent in degree: the proportion of petty to great money-holders much greater: the bias to turbulence and anarchy (not to speak of idleness and drunkenness) beyond comparison more prone.†

Turn, lastly, to British India: — What a sheet-anchor to British dominion — to the mildest, the most upright, the steadiest of all governments — if by insensible and voluntary steps the population of that remote, most expanded, and most expansive branch of the British empire, should be led to repose the bulk of their fortunes and their hopes on a paper bearing the image and superscription of a British governor! What a reduction in the rate of *interest* paid *there* by government! —what a remedy to the risks and embarrassments attendant on the interchange of so many debaseable and incommensurable modifications of metallic currency!—what an augmentation to the general mass of currency, capital, and wealth!

But all these are trifles in comparison with the additional pledge of popular attachment, and the increased assurance of internal peace. From the Zemindar to the Ryot, every Hindoo, every Mussulman, who possessed this money — every individual, in a word, who possessed money — might thus, by his own money, and to a great part of the amount of his own money — might thus, and without impeachment of probity — be converted into a pensioner of the British government.‡ For a premium equal to the interest the paper yields, he would be underwriting — perpetually underwriting his allegiance to the amount of the principal.

CHAPTER XIII.

RECAPITULATION AND CONCLUSION.

UPON the whole, the proposed measure, it is believed, will be found to promise, with some degree of assurance, the following connected, but perfectly distinct advantages: —

1. Advantage of financial profit, by con-

* To judge of the *steadiment* which an engine of this nature is capable of applying to established order, turn to France and see the support it lends to *subversion*: the affections of the people ebbing fast into the old channel; but the revolution in property operating as a barrier against the return of *ancient* monarchy, and as a sheet-anchor to the *name* of a commonwealth.

† Irish debentures — price and value not less than £100 — paper or parchment instruments as much out of the reach of the body of the people as exchequer bills — have to this purpose as little application as so much stock.

‡ Though the debt is in loose paper, it is in large paper, and in that respect on a footing with stock. There seems therefore no bar to the introduction of the proposed plan, unless it be from local circumstances, such as without particular investigation and opportunities it lies not in a man's way to be informed of.

Who can say but that the circulation of this paper might come to extend itself even beyond the sphere of British dominion? — the value of this paper in exchange having been once established and certified by experience.

"Narrainee is a base silver coin struck in Cooch Bahar, of the value of about tenpence, or one-third of a sicca rupee. The commodiousness of this small piece, the profits the people of Bootan derive from their commerce with Cooch Bahar, and some local prejudices against the establishment of a mint, have given the narrainee in these regions, as well as in those where it is struck, a common currency, though both countries are perfectly independent of each other, and totally different in their language and manner."—*Turner's Thibet*, 1800, 4to, p. 143.

The seal or other mark of the East-India Company on their packages (I remember hearing once from authority that appeared unquestionable) is received in *China* at vast distances from the factories, as satisfactory evidence of the quantities and qualities of the contents, to the value perhaps of some hundreds of pounds. Is it a supposition altogether chimerical, that a similar confidence might be brought in process of time to extend itself to the exchangeable value of a piece of paper, value a few pounds or a few shillings? In Africa, in more places than one, Park (as he tells us) made a paper money out of the Lord's Prayer. Might not commercial experience give *at length* a value which was thus given by mere superstition without experience?

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tributing in so many various, and to such considerable amounts, to the redemption of the principal of the national debt, as well as to the reduction of the rate of interest — and by affording an instrument more advantageous than any other for the application to that end of such means as are or may be provided from other sources.

2. Moral advantages, by the encouragement of frugality, and thence of temperance, among the inferior and most numerous ranks of the community.

3. Constitutional advantages, by constituting an additional bond of connexion with the government, and thence affording an additional safeguard to internal tranquillity.

4. Politico-economical advantage, by addition made to the mass of national productive capital, and thence to the mass of growing wealth.

Each of the above four masses of advantage appears sufficient to warrant an experiment, even should it be attended with some risk. Shall they not all of them together be deemed sufficient to give birth to an experiment altogether free from risk?

Few measures have ever been brought to view pregnant with such high advantages — none in which, in case of success, the degree of success has been beforehand so precisely ascertainable — none in which the deviation from the path of safety, as marked out by experience, is so slight and imperceptible.

Were the proposal expressed in these words — "Make your exchequer bills for small sums,"* — this, though not completely nor correctly expressive of the measure, would express all the *innovation* of it.

* Supposing the general plan of the proposed annuity-note currency to be discarded, an advantage upon a smaller scale might still be derivable from it, by applying some of the features of it to the improvement of the existing species of government currency called an exchequer bill, in such manner as to cause it to be accepted of at a lower rate of interest than it would otherwise be.

1. It might be made out for much smaller sums, say £10 or £5; that is to say, a part of the whole mass might be broken down with a view to general circulation — a competent portion being reserved in the present large sums for operations on a large scale.

2. It might be furnished with the proposed aids to computation, by proper tables printed on the front or back of it.

3. It might be made to receive those facilities for general circulation, which depend upon the physical qualities of the paper — viz. upon the size, form, texture, and thinness, &c., which are possessed by the notes which compose the currency of the Bank of England.

4. It might be invested with all the new securities against forgery which are here proposed.

5. Markets for the purchase of it might be opened all over the country, by the simple expedient of remitting it, in such quantities and proportions as should be deemed advisable, to the several local offices already in the pay of government: — for example, post-offices — stamp-offices — excise-offices — custom-house offices.

This suggestion is made solely for the purpose of illustration. Compared with the proposed general plan, the sacrifice made by thus confining the application of it, would be a sacrifice without an object. Limited as it is in respect of its total amount — limited as it is in respect of the duration of the annuity conveyed by it, the exchequer-bill currency is radically incapable of meeting the demand of the two classes of *petty hoarders*; and thus a proportionable part of the accommodation afforded to individuals would be lost. The utmost it could do, would be the going a small part of the way towards meeting the demand for temporary interest on the part of the other great class — possessors of temporary sums — customers for *flying annuities*: — and even to this portion of the demand, it would become less and less suitable, as the time when the annuity would cease, and the trouble of carrying in the bill for payment, and receiving the redemption money for it, approached.

The supposed modification and improvement of the exchequer-bill currency would be productive of but a part, and that a very small part, of the advantages held out by the institution of the proposed annuity-note currency. But by the institution of the proposed annuity-note currency, the advantages thus derivable from the supposed improvement of the exchequer-bill currency would be obtained in their full extent — obtained in the way of collateral result, and without any distinct measures directed to that end.

At an early period of the exchequer currency, bills were issued for sums as low as £10, or even £5. How it should have happened that the practice of issuing such small notes should have ceased, and the *minimum* note be raised to and invariably fixed at its present pitch of £100, is not difficult to conceive. The form of the security would naturally be adapted to the convenience of the *lenders*, more especially as the lenders were individuals acting on their own account, and the borrowers statesmen acting without any personal interest for the public at large. The lenders on this security have been, on the one part, and that the principal part, the immensely opulent company the Bank of England; — on the other part, the small but prodigiously opulent circle of monied men, known to each other, and meeting one another continually at or in the neighbourhood of the Exchange. £100 was a magnitude quite small enough for persons of this class. The faculty of employing in the same way a smaller sum, suppose £50, would have been of no use to them; — even £100 is not so much as they would each be under the necessity of keeping by them, or at their bankers, for the purpose of current expenses, and payments on a small scale. Bills of less magnitude would thus be attended with no advantage, and they would be attended with the disadvantage of making a proportionable addition to the trouble of computation. Another relative disadvantage, and a much more considerable one, is, that the effect of small bills — £10 and £5 bills for example — would be to open the market to a greater number of customers; thence to increase the competition for the article, and to raise the price; — in other words, to lower the rate of interest upon this paper, and thence diminish the profit to be made by purchasing it.

Whether government were aware of this at the

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The only feature in the proposed plan, which, separately taken, can be called new, is, the bringing into the market portions of government currency less than heretofore — portions less than have been issued by government in this country, but not less than than what have been issued by governments in other countries, and in this country by individuals.

The other leading features are collected altogether from established institutions. The annuity engaged for is perpetual, but redeemable — the paper containing the evidence of its sale by government, light and transferable — the produce of the sale appropriated to the extinction of the national debt.

If the experiment be tried, the earlier the success the greater; — but sooner or later, and to a certain extent, success is infallible, and even failure would be unattended with loss.

APPENDIX A.

Government ought to have the MONOPOLY *of* PAPER MONEY, *as well as of* METALLIC MONEY.

BANK Notes, though bearing no interest, circulate at par. Even private notes — the notes of country bankers, do the same: — Government paper not without interest, and even when carrying interest, not at a corresponding premium.

To what causes are we to attribute a contrast thus striking, and so much to the disadvantage of government? Is the disadvantage remediable, or irremediable? If remediable, are there any efficient reasons against employing a remedy? If a remedy can be found, is it not an event to be wished for upon the whole? Instead of bearing a share comparatively so minute as that which government bears in the business of issuing paper currency, and that upon terms comparatively so disadvantageous, ought it not rather to possess the whole? — is it not to be wished that it did possess the whole? How stand these questions with reference to general constitutional principles? — how stand they upon the footing of particular expediency — of expediency with reference to the circumstances of the particular case in question, independently of the general expediency of adhering to constitutional principles? If obtainable and desirable, by what means can such an extension of the government currency be attempted with the greatest prospect of advantage and success? Of what nature are the advantages to be derived from it, and to what length are they capable of being carried?

The advantage is the first object in the order of importance. Whatever may be the present amount of paper circulating without interest, — upon the supposition that government possessed the monopoly of the issue of such paper, the saving of the interest upon such amount, whatever be the current rate of interest, would be the advantage accruing from such monopoly.

If, then, the whole of this advantage, or any part of it, could be gained, would there be any harm in gaining it? Let us open, in the first place, the great book of the constitution. To be the same in principle at all times, constitutional laws must vary as the times, and adapt themselves to the times.

Among the most unquestioned, innocent, and unobjectionable prerogatives of the crown, acting in this as in all other instances under the controul of parliament, is the monopoly of the coinage.* When there was no currency

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time, is a point which at this time of day it might perhaps be difficult to ascertain. They might see it, but not be able to profit by it. If in times such as those of King William and Queen Anne, the connected circle of London monied men concurred in insisting upon large sums in preference to small sums, it would have been difficult for the government to resist: — pressed by the exigencies of the moment, it might have been hazardous, and perhaps impracticable, to wait for the success of an experiment upon the more extended scale. As to the monied men, some would be aware of this, others not: — witness the Bank, who, guided (it should seem) rather by habit than reflection, forbore for such a length of time to give that extension to the circle of customers for their paper, which, when given at last, relieved them from their embarrassments, and seems to have proved that the scarcity which had produced their embarrassments might as properly be called a scarcity of *small notes*, as a scarcity of *cash*.

* This branch of the prerogative, like most others, had its origin in force, with little or no regard to public utility: the king took it, not from any view of the general advantage the nation would reap from his taking it, but because he found his private advantage in taking it. But the utility of the institution is not the less real; — the advantage is not less really among its effects, though it were not the final cause of the institution. It has at times in this country, and regularly in several other countries, produced a profit to government; but its constant object has been the guarding individuals against loss by fraud from the substitution of coin of inferior value to that indicated by the exterior appearance of the pieces.

The monopoly of the metal coinage, it is to be observed, is confined to the *fabrication* of such coin as shall be legal tender; *i. e.* as a creditor shall be obliged to receive in satisfaction of his debt: — for as to the fabrication of medals of the same intrinsic value, or purporting to be of the same intrinsic value, there is nothing against it in law, so long as the impression upon them is not an imitation of the medals made on government account. The monopoly consists in the taking the coin fabricated on the king's account for the sole subject of that part of the law of contracts which prescribes what acts shall amount to the payment of a debt.

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but metal, the crown had the sole issuing of that currency. To metal currency is now added paper currency: the crown, therefore, to preserve the prerogative *in statu quo*, ought to have the sole issuing of that currency; at any rate, unless the extension of the monopoly to this modern branch be attended with greater inconveniences than what accompany its application to the old one.

Nor let it be thought that the expediency of this extension rests upon the mere general ground of adherence to established principles, sanctioned by general acquiescence — upon the propriety of keeping matters in respect of government as they are — in a word, of keeping up the *vis inertiæ* of government. If the prerogative had utility for its support in its original shape, it is recommended by equal utility in the proposed supplemental one. The use of the prerogative in respect of metal money, was to guard the people against loss by the suppression of counterfeits: in the instance of paper currency, the use and need of it are the same.

The loss to which the subject was exposed by metal money coined by individuals, was that of the difference between genuine metal and of full weight, and the coin of light weight and base alloy, which it might be apprehended would be issued by individuals. The loss to which the subject is exposed from bad paper currency is of the same kind, but much heavier in degree. Loss by bad metal currency distributes itself in small parcels, and by the minuteness of the portions to which it adheres, falls with a gentle and almost imperceptible stroke. Loss by bad paper falls in much larger masses. Loss by bad copper is as nothing — loss by bad silver is no great matter — even loss by bad gold is light, in comparison of the average rate of loss upon bad bills.

The justification of the monopoly in the new case is stronger than in the old one, in every point of view. By the monopoly of the metal coinage, the government succeeds but very imperfectly in saving the subject from loss. Coiners were punished as traitors; and yet the country swarmed with coiners. A few years ago, and the copper was three-fourths bad: — the pretended silver, a great deal of it base, and scarcely a piece of genuine silver that was not either counterfeit or light. By the monopoly of the paper currency, government might most perfectly protect the subject from bad paper. Let it but supply the market with its own paper, and a simple prohibition will keep all other paper out of the market most effectually. Against the fabrication of bad coin, capital punishment has been expended in vain: against the fabrication of paper, which under the danger of its turning out so much worse than bad coin, it seems expedient to prohibit, a pecuniary penalty would be perfectly sufficient.

If, then, in the whole scheme of government, there be an instance in which it is expedient to bring back institutions to the standard of first principles, the present will, I believe, be found among the number. Compare the advantage resulting to the community from the monopoly in the respective instances of the two species of currencies, we shall find it in every point of view greatly superior in the instance of the paper currency of fictitious value, to what it is in the instance of the currency of natural value, the metallic currency. Will the prerogative be abused? No more when extended to paper, than it is now that it confines itself to coin. Good faith as towards subjects is a jewel so deeply set in the British crown, that it can as little be expected to shake in any one part, as to drop out altogether.

APPENDIX B.

Paper Money — Causes why not circulated by Government without interest, as well as by Individuals.

THE contrast between the terms on which bank paper is received, and those on which government paper is received, has been already brought to view. The inferiority of the latter cannot, however, be owing to any inferiority in point of credit. The credit of the Bank of England can never be greater than that of the government of Great Britain;* yet a man who would trust government with his whole fortune, to the amount of hundreds of thousands of pounds, will not give a premium of more than a few shillings per £100 for an exchequer bill bearing interest, though he will give £100 for a bank note to that amount, for which he will receive no interest. The same man, too, will not only take a promissory note from the great company, of whose opulence the opinion is so universal and so high, for its nominal value, but perhaps even the note of some country banker, of whom, except from such his note, he has no knowledge. The cause of this inferiority can never, therefore, consist in any inferiority in point of credit. It must be looked for, therefore, in some other circumstance.

There are several circumstances which cooperate towards giving to the bank paper the aptitude it possesses with respect to circulation. The want of any of these properties,

* The greatest part of the capital of the Bank of England has been laid out in the purchase of government annuities; the directors of the bank therefore can never distribute these annuities in the shape of dividends amongst its stockholders, unless they receive them from government.

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or the possession of it in an inferior degree, will account *pro tanto* for the inferiority of the terms upon which the government paper obtains the degree of circulation it has obtained.

These properties are — 1. The being payable to the bearer on demand; 2. The being transferable, like coin, from hand to hand, without indorsement or any other formality; 3. The being issued for such small sums as £20, £10, and £5; 4. The being impressed on paper which, in point of size, is neither so large as to take up much room, nor so small as to be liable by its minuteness to escape observation, and be lost; and in point of texture is thin enough to bear folding without cracking, and yet not so thin but that it will bear to be written upon, by which means any proprietor may put his mark upon it, to enable him to vindicate his right to it in case of loss; 5. The having been so long in possession of the national confidence, and that to such a degree as to be the only paper which individuals all over the kingdom are universally in the habit of accepting upon the same terms as the current coin.*

An exchequer bill bears a daily interest, and is made payable to bearer. Upon hearing this, one should suppose that it should bear a premium to the amount of the interest; — since a bank note for that sum, payable to bearer and carrying no interest, bears no discount, but is received at par. An exchequer bill does indeed bear a premium, but that premium is very far short of being equal to the interest.

The difference, we have seen, does not arise from difference in point of security and credit, but may perhaps be traced to the combined influence of several causes; viz. — 1. The want of bills for small sums of a size adapted to the general run of the demand; 2. The not being made payable to the bearer at any time, but only after the interval of about half a year after its issue; 3. The want of that simplicity, in respect of the terms and mode of payment, which is observable in the paper of the Bank of England; — to which may perhaps be added, something (of *which* presently) in the sensible properties of the instrument itself by which the engagement is conveyed.

That the want of sufficient division has a very considerable share in the production of the effect, can scarcely be a matter of doubt. Exchequer bills are not for a less amount than £100; they are never issued for a less sum. Bank notes are for various amounts less than £100, viz. £50, £40, £30, £20, £15, £10, and £5. In the instance of exchequer bills, the magnitude of the sum is itself sufficient to render this species of paper unfit for the ordinary course of circulation — it is of itself sufficient to throw it out of the ordinary current of private dealings. It is a commodity for which comparatively so few are qualified to bid, that those few cannot but enjoy considerable advantage in their biddings. It is the money of so few men, that that circumstance is of itself sufficient to prevent it from being generally known. Accordingly, the circulation of exchequer bills is confined in great measure, for aught I know, to the metropolis: — it is confined to the neighbourhood of the Alley — to bankers, stock-brokers, and the other classes of money dealers. A man may have enjoyed a large income — a man may have had very extensive dealings in the way of trade, and yet go out of the world without having ever set eyes on an exchequer bill.

The bank, it may be said, issues notes for sums as large as £100 — indeed, for sums to a prodigious degree larger; and yet there is no more discount upon these large notes on the bank, than upon the very smallest ones. True: but then, along with these larger notes, the bank issues, and that in great plenty, the smaller notes above mentioned — and that in such plenty, as to be in readiness for change of the larger notes, wherever and by whomsoever such change is wanted: nor are such larger notes ever issued to any one who chooses rather to have the smaller notes.

The small notes of the bank, it may be observed in reply, afford no facility to the circulation of the large notes of the same company, that the exchequer bills of government do not equally possess: for, admitting that the value of an exchequer bill of £100 would not be quite so great, setting aside the article of interest, as that of a bank note to the same nominal amount, still the exchequer bill has a known value in the market, as experience shows, not much less than that of the bank note. It ought, therefore, to be as easy, were this all, to find change for a £100 exchequer bill in bank notes, as for a £100 bank note.

To this it may be rejoined, that the facility in the two cases is not in truth alike. Everybody being equally acquainted with bank notes, anybody who has £100 to keep for a little while before he will have to change it, will as readily take it in a single bank note for £100, as in ten notes for £10; for though he may never have seen such a thing as a bank note for £100 before in his life, yet the perfect resemblance it bears in every respect but the quantity of paper, engraving, and writing, to the ten £10 notes, makes it, so long as he does not want to change it, exactly the same thing to him: — the security is the same, — the conditions and time of payment are the same, — and what is no small matter, the

* A bank-note has other properties calculated to guard it against forgery; — but these do not belong to the present matter.

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appearance of the instrument is exactly the same, the variation in respect of the sum excepted—a sort of variation which he is already accustomed to by the smaller notes. A man who has a £100 bank note, need not fear, therefore, the getting smaller bank notes to the same amount from any one who has them, and is in no immediate want of such lesser notes in the way of change:—whereas a man who has only a £100 exchequer bill, may see good grounds for doubting whether he shall be able with equal facility to get such change for such exchequer bill; since, among twenty people to whom he may offer it, every one may perhaps be altogether unacquainted with it, and if not absolutely decided in regarding it as a species of paper of less value, may still be unwilling to give himself the trouble of satisfying himself whether it be of equal value or not.

The want of efficient assurance of putting off this species of paper with as much facility as a bank note to the same amount, gives this species of paper a disadvantage, or at least it may be reckoned among the causes which contribute to give this paper a disadvantage in point of prompt circulation, in comparison with bank notes. But since, accordingly, the exchequer bill is not, like the bank note, everybody's money, the consequence is, that in order to find out a person whose money it is, it must be sent to the great market for money in different shapes,—the Alley: it must go into the hands of a broker; and the expense, but much more the time (for the expense is but $\frac{1}{2000}$ per cent.) places it thus on a ground of considerable disadvantage in comparison with a bank note.

So far as this disadvantage goes, instead of operating as current cash, it has the effect only of so much capital in the funds, operating in the shape of principal money, as carrying interest, and serving as a source of income. In this quality, the price it bears will approach to that of stock—to that of a government annuity given in exchange for so much money rather than to the price of so much money receivable at any time. It will, however, have the advantage, in point of price, of such an annuity, and that on several accounts: it is transferable with so much less trouble and expense—the value of it rises by keeping, according to a visible and certain law, in a visible and certain proportion, day by day;—whereas the price of so much stock, though it may rise in much the same degree upon the whole as the period of payment approaches, yet as it can rise by no interval less than $\frac{1}{8}$ per cent., amounting in three per cents. to $\frac{1}{24}$ of the whole, it can rise by no shorter steps than one step of at least fifteen days; and even then, the rise is so liable to be disturbed by fluctuations, as to be, in the character of a rise proportioned to lapse of time and the consequent accrual of interest, in a manner imperceptible.

It might be thought, that though the £100 exchequer bill is, for the reasons above pointed out, not everybody's money—not the money of so many people as the £100 bank note, still it might be worth so many people's money, as to bear the same price, or nearly the same price. It would, for example, be the money of bankers and money-dealers in general. It certainly is the money of bankers to a degree: yet still not in the same degree as the bank note. It is their money upon a footing more nearly approaching to that in which so much stock is their money, than that in which the bank note is their money. A banker may lay out his money in this way for the purpose of making it produce an interest; and thence he may lay out in this way such part of his receipts as he allows himself to lay out for his own benefit: but he cannot lay out in this way, as he may in bank notes, any part, or at least any considerable part, of the money which he deems it necessary to keep by him in readiness to answer drafts; because, as has already been observed, he cannot be equally sure of the exchequer notes being accepted of by a person who comes with a draft, as he can of the bank notes being so accepted of. He can keep it, therefore, upon no other footing than that of an evidence of his being entitled to a principal sum bearing interest,—in a word, as a source of interest. But in the capacity of a source of interest, it must bear the interest it purports to give, or at least a very considerable part of it: if it did not, it would not answer the purpose; it therefore cannot bear, in this quality, a premium eating out that interest, or any considerable part of it. It may indeed be worth his while to take somewhat less interest upon such a security than he could make of the same money in the funds; because it will cost him rather less time, and at at any rate less money, to convert it into cash at any time, than to convert into cash so much stock. And this accordingly is the case:—a man makes almost one per cent. less in this way than by buying into the funds.

As to the circumstance of the exchequer bill not being payable on demand, till half a year after the time of its being issued, this circumstance is not sufficient of itself to account for the depreciation. Taken by itself, it seems in fact to have but little or no influence. If this were the sole cause of depreciation, this cause being removed, the effect would cease: before the time when principal and interest became payable, or at least at the time of issuing, an exchequer bill would indeed bear no premium; but no sooner were that period arrived, than it would bear a premium, and that equal to the interest. This, however, is so far from being true, that, as

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far as I can learn, the arrival of this period makes in this respect no perceptible change. At the time of issuing, the exchequer bill bears a small premium, thereby reducing the rate of interest that can be made of it; at the arrival of the time of payment, it continues to bear that premium, but does not bear any more. The truth is, that the inconvenience of its not being payable for half a year is foreseen, and so far as it is reckoned for anything, allowed for from the first; and the exchequer bill takes its station among the commodities of the Alley, as a paper better adapted for a source of income than for general circulation; and this station the change in its nature, operated by the arrival of the time for payment, is not able to raise it from.

The comparative want of simplicity in respect of the terms and mode of payment, in comparison with a bank note, cannot but have some share in the comparative depreciation of an exchequer bill. To be adapted to general circulation, an engagement of this sort, as to the contents of it, ought to be so simple, that, if possible, everybody of a condition high enough to have property to such an amount pass through his hands, may be able without effort to apprehend them. The engagement taken by the bank — a promise on the part of an individual to pay the sum in question on demand, and that to the bearer by whom the instrument of engagement shall be produced — possesses this property in the highest degree of perfection that can be conceived. In the instance of the exchequer bill, several circumstances concur in keeping down the terms of the engagement considerably below this point of perfection. It is to be paid indeed to the bearer — that is, if it be paid at all. But will it be paid at all? This appears to depend upon a variety of contingencies; — viz. 1. If aids happen to be granted for the service of the next year, then out of the first of such aids. But will any such aids be granted? This is expressly stated to be a matter of uncertainty: — it is stated, that perhaps no such aids may be granted before a certain date in the next year, — and provision is made accordingly for that contingency, that if no such aids be granted, that the money is to be paid out of the consolidated fund. But if paid out of this consolidated fund, when is it to be paid? — and by whom? These are questions it leaves in utter darkness. Is it, too, in other respects, a good bill? Grounds of suspicion, and those of the strongest kind, present themselves upon the face of it. A period is expressed, during which it will not be accepted of as such by the very government that issues it. It is not to be current, or pass in any of the public revenues, aids, taxes, or supplies whatsoever, or at the receipt of the exchequer, before a certain day in the next year, — that is, for half a year and upwards. Before that period, then, it will not be treated as a good bill; — this it expressly says. Will it afterwards? and when? Of this nothing is said: it is left entirely to conjecture.

Nor is this all: — another ground of uncertainty and suspicion. It does not state how soon it is to be paid; but it does state that it is not to be paid till another sum, amounting perhaps to several millions, has been paid. "Registered and payable after 1,754,400," says a bill, No. 17545, I have before me. When is it, then, that this £1,754,400 will be paid? This again is all in darkness.

To a person acquainted with the mechanism of government, all these points are in a state of perfect clearness: he knows, that with all these apparent difficulties and uncertainties, the bill that presents them is at least as good as a bank note. But among persons who are not unaccustomed to the simple language of a bank note, not one out of a hundred, or perhaps a thousand, has any such acquaintance with the mechanism of government.

Even the introductory words, inserted with the view of indicating the authority on which the bill is issued, are of a nature more likely to excite doubt and difficulty in an unlearned mind, that is, in the mind of the bulk of readers, than to command confidence. "By an act of Parliament, Tricesimo quarto Geo. III. Regis. For raising a certain sum of money by loans or Exchequer Bills for the service of the year 1794." In this formidable mixture of English and Latin, interlarded with terms of art and the language of finance, a man is sent to an act of parliament, to know whether the bill will be paid or no, and if paid, when and how and by whom — the rather as in the bill itself no answer to any of these questions is to be found: — and upon his putting a right construction upon a revenue act of parliament — he who perhaps never read an act of parliament in his life, and almost certainly (if not a lawyer) is not in the habit of trusting himself to find out the sense of an act of parliament — depends his knowing whether the bill will or will not be paid, and so forth. It is a case for him to consult his lawyer upon, as he would think it necessary to do upon other acts of parliament, where property to much less amount than £100 (the amount of an exchequer bill) was at stake. But the occasion does not allow time for consulting a lawyer; — and if it did, the expense of consulting him would eat a good way into the profit to be made by the interest of which the bill holds out the prospect, in addition to the principal that would be promised by a bank note to the same amount.

The fourth and last of the causes that have been mentioned as appearing to concur in the production of the depreciation in question, is the character of the instrument in respect of

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its sensible qualities — the size and texture of the paper. A bank note is perhaps, in respect of these properties, as convenient for circulation as can be imagined. In point of size and thickness neither so large as to take up an inconvenient quantity of room in the pocket or pocket-book, not even when a considerable number are taken together; — nor yet, on the other hand, so small as to be liable to escape notice and be lost: while, by reason of its extraordinary thinness (besides being so much the better guarded against fraudulent alteration, which is the principal object,) it is better adapted to bear folding to reduce it to a size fit for the pocket and pocket-book, without cracking at the edges, and so coming to pieces.

In these particulars, the difference between the bank note and the exchequer bill is not great — though, as far as it goes, it is rather to the disadvantage of the exchequer bill. In point of size, the exchequer bill is much upon a par with the bank-note — not quite so long — a little broader: these differences are not at all material. But the paper is a great deal thicker — rather of a thick and brittle sort than otherwise — so much so as to be in appearance more exposed to crack than any of the papers commonly used as writing papers.

In the bank note, too, there is something in the neatness of the engraving, and the conspicuous and emphatic display of the sum, that cannot but be particularly attractive and fascinating to an ordinary eye. In the exchequer bill, there is no such display of the sum; and the style of the impression of the long-winded explanation of the conditions of payment has nothing particular to recommend it.

Upon these combined causes, then, it appears most probable that the depreciation of government paper depends; and not till they are removed, can it be expected that this comparative depreciation will disappear.

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A

GENERAL VIEW

OF A

COMPLETE CODE OF LAWS.

BY

JEREMY BENTHAM.

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*** The following Work is edited from the French of Dumont, and the original MSS. and printed works of Bentham.

In his advertisement to the edition of 1802, Dumont states, that "Bentham only regarded this work as a sketch for his own guidance, and as too little developed to be offered to the public. Indeed, the manuscripts have in some chapters only presented me with fragments, and tables of matter to be inserted; but as the route was everywhere marked out, I have not been afraid that I should lose the road. The spirit of philosophy and invention have not yet been applied to this general geography of the law. It is a subject upon which there have as yet been no human traces. In the following work, a luminous and regular plan will be found succeeding to this state of confusion and disorder."

"Jam mare littus habet: plenos capit alveus amnes;
Flumina subsidunt: colles exire videntur,
Surgit humus." *Metamorphoses*, lib. i.

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GENERAL VIEW, &c.

CHAPTER I.

GENERAL DIVISION.

A CODE of Laws is like a vast forest; the more it is divided, the better it is known.

To render a code of laws complete, it is necessary to know all the parts which should be comprised in it. It is necessary to know what they are in themselves, and what they are in relation to one another. This is accomplished when, taking the body of the laws in their entirety, they may be divided into two parts, in such manner that everything which belongs to the integral body may be found comprised in the one or the other part, and yet nothing shall at the same time be found in both parts. This is the only case in which the division is complete.

§ 1. *Customary Divisions.*

The customary divisions are —

First Division: 1. *Internal law;* 2. *Law of Nations.* —The first is *National law*, which takes its name from the country to which it refers; as English law, French law, &c. &c.

A detached part of this law which only concerns the inhabitants of a town, of a district, or of a parish, forms a subdivision which is called *municipal law.*

The second is that which regulates the mutual transactions between sovereigns and nations. This might be called exclusively *international law.* This division is complete, but its parts are unequal and slightly distinguished.

Second Division: 1. *Penal law;* 2. *Civil law.* — When this division is given as complete, *international law* has at least been forgotten.

Third Division: 1. *Penal law;* 2. *Civil law;* 3. *Political law.* —To distinguish this latter from *international law*, it would be better to call it *constitutional law.* If the second division is complete, what must be thought of this? Its third part must, in some shape or other, have been comprised in the other two.

Fourth Division: 1. *Civil or Temporal law;* 2. *Ecclesiastical or Spiritual law.* — A complete division, but unequal, and one of which the parts are much intermixed.

Fifth Division: 1. *Civil law;* 2. *Military law.* —Another division apparently limited to *internal law.*

This unfortunate epithet *civil*, opposed alternately to the words penal, ecclesiastical, political, military, has four different meanings, which are incessantly confounded with each other. It is one of the most unmeaning protean terms in all jurisprudence.

Sixth Division: 1. *Written law;* 2. *Unwritten, or Customary law.*

Laws may exist in the form of statutes or in the form of customs. The statute law is called written positive law; *custom* is a conjectural law which is drawn by induction from the former decisions given by the judges in similar cases.

Seventh Division: 1. *Natural laws;* 2. *Economical laws;* 3. *Political laws*, to which correspond, — the duties devolving upon an individual, family duties, and the duties of man in society. But where does man exist without society? — and if there be any such place, whence are its laws derived? What are these *natural* laws, which nobody has made, and which everybody supposes at his fancy? What are these *economic* laws, which are not political? The making of such divisions may be parodied by distributing zoology into the science of chimeras, of horses, and of animals! Such, nevertheless, is the nomenclature of legislation, according to the noblest spirits of the age, the D'Alemberts, the Diderots, and the principal of the economists. What, then, must be the condition of the science?

They also withdraw from the body of the law considerable portions which do not give rise to the idea of division, because the words which respectively express them have no correlative terms to express the residue of the mass of the laws. Maritime law — law relating to police, finance, political economy, procedure, &c.: these portions being extracted, what relation have they with the more formal divisions? — in which ought they to be placed?

Criminal law is a portion altogether undetermined of penal law. It is a law directed against an offence which has been called a crime. This distinction is the result of many

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indeterminate circumstances: odious procedure — enormous evil or reputation of enormity — evil intention — severe punishment.

Canon law. This is a sufficiently determinate portion of ecclesiastical law: — That portion of this law which is derived from a certain source.

§ 2. *New Divisions.*

The divisions which follow are either altogether new — have only received a semi-denomination — or have been but little considered at present. I announce them in this place, because of the light they shed upon the theory of the laws, and because of their practical utility.

Eighth Division: 1. *Substantive laws;* 2. *Adjective laws.* — This last is the name which I give to the laws of procedure, for the purpose of designating them by a word correlative to the principal laws from which it will be so often necessary to distinguish them. The laws of procedure could neither exist nor even be conceived of, without these other laws, which they cause to be observed. Whoever understands the meaning of these two words, as applied to grammar, will understand the meaning which I would attach to them when applied to jurisprudence.

Ninth Division: 1. *Coercive and Punishing laws;* 2. *Attractive or Remuneratory laws.* — The former employ punishments — the second employ rewards as their sanctions.

Tenth Division: 1. *Direct laws;* 2. *Indirect laws.* — I call those *direct*, which reach their end in the most direct manner, by directing or prohibiting the act to which they would give birth, or which they would prevent. I call those *indirect*, which, for accomplishing a purpose, employ distant means, attaching themselves to other acts, which have a more or less immediate connexion with the first. Prohibition of murder under pain of death, is a *direct method* of preventing assassinations: prohibition against carrying offensive weapons an *indirect method** of preventing them.

Eleventh Division: 1. *General laws;* 2. *Particular laws.* — In the first are included those in which everybody is interested — in the second those which are directly interesting only to certain classes. This division is of great practical utility in facilitating a knowledge of the laws.

Twelfth Division.: 1. *Permanent Laws;* 2. *Laws necessarily Transitory.* — There are some laws which die of themselves, when the circumstance which gave birth to them has ceased. A law which refers to the conduct of a certain individual must die with him. Among transitory laws, the greater number are called regulations. Such are particular orders, laws which must and which ought to be changed, and which only correspond with a certain state of things.

Thirteenth Division: 1. *Code of the Laws;* 2. *Code of Formularies.* — A formula constitutes a part of the laws when it is directed by the legislature: a patent of creation, a record, a certificate, a deed, a form of petition, may all become part of the law.

Of all these divisions, the third into *Penal Law, Civil Law, Constitutional Law,* is the most complete, the most usual, and the most convenient. It is therefore the centre from which I shall cause all the parts to diverge.

As to writers on matters of jurisprudence, they may be ranged into two classes. Some treat of the laws of one country, explaining, commenting upon, and reconciling them; as Heineccius on the Roman laws, and Blackstone with reference to the laws of England.

The others treat of the art of legislation itself, either by explaining its preliminary notions, the terms of universal jurisprudence, such as *powers, rights, titles, contracts, obligations, crimes, &c.*; or seeking out the general principles upon which they ought to be founded, or examining the legislation of a certain country, to show whether it be feeble or strong.

Few works of law are of a unique and distinct character. Grotius, Puffendorf, Burlamaqui, assume successively, and sometimes at one time, all these characters. Montesquieu, in his "*Esprit des Lois,*" at first proposed to make a treatise upon the art; but in his last books the legislator assumes the antiquarian and the historian; and he can only be compared to the river, which after having traversed and fertilized noble countries, never reaches the sea, but is lost in the sand.

Hobbes and Harrington, who have treated only of the principles of constitutional law, have so done in a general manner, but with a view to local application. Beccaria, in his Treatise on Crimes and Punishments, has attended exclusively to them as a branch of philosophy.

CHAPTER II.

RELATIONS BETWEEN THE LAWS CONCERNING OFFENCES, RIGHTS, OBLIGATIONS, AND SERVICES.

In a code of laws, everything turns upon *offences, rights, obligations, services.* Clear ideas of the meaning of these abstract terms are therefore desirable, and on this account it is necessary to know how these different notions are formed, and what are their reci-

* Here it is clear, that a law which is indirect as to one act, becomes direct in reference to another. These terms are correct only when they refer to one and the same act, or to two different laws.

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procal relations. To show their mode of generation, is to show their nature.

A period may be easily imagined when men existed without laws, without obligations, without crimes, without rights. What would they then possess? Persons, things, actions; *persons* and *things*, the only real beings; *actions*, which exist only for a fleeting moment, which perish the instant that they are born, but which still leave a numerous posterity.

Among these actions, some will produce great evils, and the experience of these evils will give birth to the first moral and legislative ideas. The strongest will desire to stop the course of these mischievous actions — they will call them crimes. This declaration of will, when clothed with an exterior sign, will receive the title of *law*.

Hence, to declare by a law that a certain act is prohibited, is to erect such act into a *crime*. To assure to individuals the possession of a certain good, is to confer *a right* upon them. To direct men to abstain from all acts which may disturb the enjoyment of certain others, is to impose *an obligation* on them. To make them liable to contribute by a certain act to the enjoyment of their fellows, is to subject them to *a service*. The ideas of *law*, *offence*, *right*, *obligation*, *service*, are therefore ideas which are born together, which exist together, and which are inseparably connected.

These objects are so simultaneous that each of these words may be substituted the one for the other. The law directs me to support you — it imposes upon me the *obligation* of supporting you — it grants you the *right* of being supported by me — it converts into an *offence* the negative act by which I omit to support you — it obliges me to render you the *service* of supporting you. The law prohibits me from killing you — it imposes upon me the *obligation* not to kill you — it grants you the *right* not to be killed by me — it converts into an *offence* the positive act of killing you — it requires of me the negative *service* of abstaining from killing you.

It is only by creating *offences* (that is to say, by erecting certain actions into offences) that the law confers rights. If it confer a *right*, it is by giving the quality of offences to the different actions by which the enjoyment of this right might be interrupted or opposed. The division of rights ought therefore to correspond with the division of offences.

Offences, inasmuch as they concern a determinate individual, may be distributed into four classes, according to the four points in which he may be injured: — Offences against the person—offences against honour—offences against property — offences against condition. In the same manner, rights may be distributed into four classes: — Rights of security for the person—rights of security for honour — rights of security for property — rights of security for condition.

The distinction between rights and offences is therefore strictly verbal — there is no difference in the ideas. It is not possible to form the idea of a *right*, without forming the idea of an *offence*.

I imagine to myself the legislator contemplating human actions according to the best of his judgment: he prohibits some, he directs others: there are others which he equally abstains from commanding or prohibiting. By the prohibition of the first, he creates *positive offences:* by the injunction of the second, he creates *negative* offences. But to create a positive offence, is to create *an obligation not to act* — to create a negative offence is to create *an obligation to act*. To create a positive offence, is to create a negative *service* (the service which consists in abstaining from a hurtful action.) To create a negative offence is to create a *positive* service (the service which consists in the performance of a useful action.) To create offences, is therefore to create obligations or forced services: to create obligations or forced services, is therefore to confer *rights*.

With reference to actions, with respect to which the legislator neither pronounces a prohibition nor an injunction, he neither creates an offence, an obligation, nor a forced service. Still he creates a certain right, or leaves you a power you already possessed, that of *acting* or *not acting* as you like. If, with respect to these same actions, there had previously existed an injunction or a prohibition, and this injunction or prohibition had been revoked, it might be said without difficulty that the right which was restored to you, the law conferred or restored it. The only difference is, that in the one case you hold the right through the activity of the law; in the other case, you hold it through its inactivity. In the actual state, it appears as if you owed it to the law alone, whilst beforehand you appeared to be indebted partly to the law and partly to nature.

You owe it to nature, inasmuch as it is the exercise of a natural faculty; — you owe it to the law, inasmuch as it might extend the same prohibition to this as well as to other actions.

With respect to those actions which the law refrains from directing or prohibiting, it bestows a positive right, — the right of performing or not performing them without molestation from any one in the use of your liberty.

I may stand or sit down — I may go in or go out — I may eat or not eat, &c.: the law says nothing upon the matter. Still the right which I exercise in this respect I derive from the law, because it is the law which erects into an offence every species of violence by

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which any one may seek to prevent me from doing what I like.

This, then, is the connexion between these legal entities: they are only the law considered under different aspects; they exist as long as it exists; they are born and they die with it. There is nothing more simple, and mathematical propositions are not more certain. This is all that is necessary for obtaining clear ideas of the laws, and yet nothing of this is found in any book of jurisprudence; the contrary is, however, everywhere found. There have been so many errors of this kind, that it may be hoped that the sources of error are exhausted.

The words *rights* and *obligations*, have raised those thick vapours which have intercepted the light: their origin has been unknown; they have been lost in abstractions. These words have been the foundations of reasoning, as if they had been eternal entities which did not derive their birth from the law, but which, on the contrary, had given birth to it. They have never been considered as productions of the will of the legislator, but as the productions of a chimerical law—a law of nations—a law of nature.

I shall only add another word upon the importance of clear ideas respecting the origin of rights and obligations. They are the children of the law; they ought never, therefore, to be set in opposition to one another: they are the children of the law; they should, like the law itself, be subordinate to general utility.

The fundamental idea, the idea which serves to explain all the others, is that of an *offence*. It possesses clearness by itself; it presents an image; it addresses itself to the senses, it is intelligible to the most limited mind. An offence is an act from which evil results. To do a positive act, is to put one's self in motion; to do a negative act, is to remain still. Now, a body in motion, or a body at rest, presents an image; an individual wounded, an individual suffering, in consequence of any action, presents an equally familiar image. It is not the same with the fictitious entities called *rights* and *obligations*. They cannot be depicted under any form; they may, however, be connected with sensible images, but they then cease to be abstractions; they are united to real things, as in the expressions, the right to do a certain act—the obligation to perform it or not to perform it. The more nearly such expressions convey the idea of an offence, the more easily are they understood.

CHAPTER III.

RELATION BETWEEN THE PENAL AND CIVIL CODE.

If the distinction between the civil and penal code be inquired for, the greater number of jurisconsults reply, that the civil code contains the descriptions of rights and obligations, and the penal code those of crimes and punishments.

If the meaning of the preceding chapter be clearly understood, it will be perceived that there is no foundation for this distinction. To create rights and obligations, is to create offences; to create an offence, is to create the right which corresponds therewith: it is one and the same law, one and the same operation.

If you say, that the right which you have to be supported by me belongs to a certain class of laws which ought to be called *civil*, and that the offence which I commit by neglecting to support you, belongs to a different class of laws which ought to be called penal, the distinction would be clear and intelligible.

There exists between these two branches of jurisprudence a most intimate connexion; they penetrate each other at all points. All these words—*rights, obligations, services, offences*—which necessarily enter into the civil laws, are equally to be found in the penal laws. But from considering the same objects in two points of view, they have come to be spoken of by two different sets of terms:—*obligations, rights, services*, such are the terms employed in the civil code: *injunction, prohibition, offence*, such are the terms of the penal code. To understand the relation between these codes, is to be able to translate the one set of terms into the other.

Such being the intimate connexion between these two codes, it seems extremely difficult to draw a distinction between them: I shall, however, attempt it.

A civil law is that which establishes a right: a penal law is that which, in consequence of the establishment of a right by the civil law, directs the punishment in a certain manner of him who violates it. Thus, a law which should confine itself to the interdiction of murder, would be a civil law; the law which should direct the punishment of death against the murderer would be a penal law.

The law which converts an act into an offence, and the law which directs the punishment of that offence, are, properly speaking, neither the same law nor parts of the same law. *Thou shalt not steal:* there is the law creating an offence. *The judge is directed to imprison those that steal:* there is the law which creates the punishment. These laws are so distinct, that they refer to different actions—they are addressed to different persons. The first does not include the second, but the second implicitly includes the first. Say to the judges, "*You shall punish thieves,*" and a prohibition of stealing is clearly intimated. In this point of view, the penal code would be sufficient for all purposes.

But the greater number of laws include

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complex terms, which can only be understood after many explanations and definitions. It is not only necessary to prohibit theft in general: it is necessary to define what is *property*, and what is *theft*. It is proper that the legislator should form two catalogues: the one containing the events which confer a right to the possession of each thing — the other containing the events which destroy this right.

These matters of explanation belong principally to the civil code: the *commanding* part, contained in penal laws, properly constitutes the penal code.

All laws which have no penal clauses, or which only prescribe the obligation of restitution when any one has become possessed of the property of another without evil intention, may be placed in the civil code. All laws which direct a punishment over and above simple restitution — for example, imprisonment, forced labour, fine, &c. — may be reserved for the penal code.

In the civil code, the attention is chiefly demanded by the description of the offence, or of the right. In the penal code, the prominent point is the punishment.

Each civil law forms a particular head, which ought to rest upon a penal law. Each penal law is the consequence, the continuation, the termination of a civil law.

In the two codes, there should be general heads. They should have for their object the explanation of everything which belongs to the particular titles: — definitions, amplifications, restrictions, enumeration of sorts and individuals; — in short, expositions of all sorts.

It ought, however, never to be forgotten, that these two codes are one as to their nature and their object; that they are divided only for the convenience of distribution, and that we might have arranged all the laws upon one plan, upon one map.

If a legislator have given a complete description of all the acts which he is desirous should be regarded as *offences*, he will have formed a complete collection of the laws: he has referred everything to the penal code. If he have established all the obligations of the citizens, all the rights created by those obligations, and the circumstances which shall cause those rights to begin and end, he will again have formed an entire code: but here he will have referred everything to the civil code.

A code of laws under this point of view ceases to be a bugbear by its immensity. We see that there are means of ascertaining its dimensions — of surveying the whole, and referring every part to a common centre.

CHAPTER IV.

OF METHOD.

IN what order should the different parts which compose a complete code of legislation be arranged?

There are some persons who have occasion to know the whole system of the laws; viz. those who are charged with their maintenance and application. Others have occasion only to know the part which concerns them, and of which it would be dangerous for them to be ignorant: these are the individuals who are bound to obey the laws.

In the arrangement of the laws, that which is best adapted for the generality of the people ought to be regarded. The multitude have not leisure for profoundly studying the laws: they do not possess the capacity for connecting together distant regulations — they do not understand the technical terms of arbitrary and artificial methods. The matter of a code ought therefore to be disposed in the order which will be most easily understood by the least skilful — in the order which is most interesting from the importance of the subjects — in a word, in the most natural order.

But what is the most natural order? It is the order according to which the law would be most easily consulted — in which the text which applies to a given case would be most easily found, and its true meaning understood. The best method is that which gives the greatest facility in finding what is sought.

Rules concerning Method.

1. *That portion of the laws which most clearly bears the impression of the will of the legislator, ought to precede those portions in which his will is shown only indirectly.*

For this reason, the penal code ought to precede the civil code, and the constitutional code, &c. In the first, the legislator exhibits himself to every individual; he permits, he commands, he prohibits; he traces for every one the rules of his conduct; he uses the language of a father and a master. In the other codes, he has less to do with commandments than with regulations and explanations, which do not so clearly address themselves to everybody, and which are not equally interesting to those concerned at every period of their lives.

2. *Those laws which most directly promote the chief ends of society, ought to precede those, the utility of which, how great soever, is not so clearly evident.*

In obedience to this rule, the penal code ought still to precede the civil code, and the civil to precede the constitutional code. There is nothing that tends more directly to promote the great ends of society, than the laws which

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prescribe the manner in which the citizens should behave towards each other, and which prevent them from doing mischief. Besides, since the idea of an offence is fundamental in legislation, and everything emanates from it, it is the first upon which the public attention should be fixed.

3. *The subjects which are most easily understood, should precede those of which the conception is less easy.*

In the penal part, the laws which protect the person, as the clearest of all, ought to precede those which protect property. After these may successively be placed those which concern reputation; those which relate to the legal condition of individuals; those which embrace a double object, as the person and property, the person and reputation, &c.

In the civil code, those titles which relate to *things*, objects material and palpable should be placed before those which relate to rights, objects immaterial and abstract. The titles which relate to the rights of property before those which relate to the condition of individuals, &c.

In the code of procedure, in virtue of this rule, the most summary courts would stand first.

4. *If, in speaking of two objects, the first may be spoken of without referring to the second — and on the contrary, the knowledge of the second supposes a knowledge of the first, — it is right on this account to give priority to the first.*

Thus, in the penal code, offences against individuals should be placed before offences against the public — and offences against the person before offences against the reputation.

In the civil code, notwithstanding another principle of arrangement, more apparent but less useful, it will be proper to place the condition of master and servant — the condition of guardian and ward, before that of father and child — husband and wife; because a father and husband are in certain respects the master, and in others the guardian, of the children and wife.

In virtue of this rule, the penal and civil code ought to precede the code of judicial organization and procedure.

To institute a process, is to demand satisfaction for an offence, or to require a service in consequence of a right. But the catalogue of offences, of services, of rights, will be found in the penal and civil codes; with these, therefore, we ought to begin.

Procedure is a means for attaining an end: it is the method of employing the instrument which is called *law*. To describe the means of using the instrument, before describing the instrument itself is an almost inconceivable reversal of order.

To establish a new system of procedure, and allow misshapen laws to subsist, is to build upon foundations which are crumbling, it is to rebuild a falling house by beginning at the top. Everything should be consistent and harmonious between the different parts of the code. It is impossible to establish a good system of procedure without good laws.

5. *Those laws the organization of which is complete — that is to say, which possess everything necessary to give them effect, to put them in execution — ought to precede those of which the organization is necessarily defective.*

A certain part of the political code is necessarily in this latter condition. There must be a stop somewhere in the establishment of laws. *Quis custodiet ipsos custodes?* — The laws which govern the subjects ought to precede those by which it is attempted to restrain the sovereign power. The first — the laws for the people *in populum* — form a complete whole; they are accompanied by penalties, and a procedure which insures their execution. But the laws *in imperium* respecting the governors, unless they change their nature, cannot have for their assistance either the one or the other of these auxiliary laws. A punishment cannot be assigned for the offences of the sovereign, or of the body which exercises the sovereignty: no tribunal and no forms can be prepared for their trial; — all that human wisdom has been able to devise is reduced to a system of precautions and indirect means, rather than a system of legislation. The power of removal, for example, is employed to obviate the corruption of a representative body. The nature of the case does not admit of any judicial methods, any regular procedure.

International law is in the same condition. A treaty between two nations is an obligation which cannot possess the same force as a contract between two individuals. The customs which constitute what is called *the law of nations*, can only be called laws by extending the meaning of the term, and by metaphor. These are laws, the organization of which is still more defective and incomplete than that of political law. The happiness of the human race would be fixed, if it were possible to raise these two classes of laws to the rank of complete and organized laws.

The only point which is common to every existing body of laws, is, that they are all equally strangers to all these rules.

Justinian, in the Pandects and Institutes has followed two independent and incommensurable plans, which have determined the plans of all posterior jurists. Those who have been desirous of correcting Justinian, have only ventured to correct him by himself. Heineccius, the most sensible of the Romanists, has sought to refer everything to the order of the Pandects; and Beger has sought to bind up everything to that of the Institutes. Both methods are equally vicious.

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Does not the idea of *an offence* govern everything in matters of law? Who would believe it? In the vast system of Roman law there is not a single entire chapter which treats of offences. The whole has been distributed under the three divisions—*rights of persons, rights of things, suits at law:* offences are incidentally mingled here and there. Those which are most connected by their nature, are often the farthest removed from one another, whilst those that are the greatest strangers touch each other.

Modern codes are not more methodical. The Danish code begins with civil procedure—the Swedish code begins with that part of the civil code which regards the condition of persons.

The code of Frederic, which bears the pompous title of universal, begins with the civil part, to which it confines itself and leaves it incomplete.

The Sardinian code presents at first certain penal regulations, but the first offences of which it treats refer to religion. Parts of the civil and constitutional codes follow, mingled with each other in continual disorder.

The code of Theresa is purely penal, but where does it commence?—first blasphemy, afterwards apostacy, afterwards magic. In the first part it treats of procedure.

Blackstone, who confined himself to making a picture of the laws of England, has only sought commodiously to arrange the technical terms most frequently used in English jurisprudence. His plan is arbitrary, but it is preferable to all those which have preceded him. It is a work of light, in comparison with the darkness which previously covered the whole face of the law.

CHAPTER V.

PLAN OF THE PENAL CODE.

PENAL laws, as we have already seen, are those alone which follow in a regular train, and form a complete whole. What are called civil laws, are only detached fragments belonging in common also to the penal laws. Laws deprived of all factitious sanction exercise so feeble an influence, that they ought not to be relied upon, if it be possible to do otherwise. Remuneratory laws, beside their weakness, are too costly, so that it is not possible ever to trust them with the rough work of legislation. There remains penal law, the only matter of which it is possible to construct the principal portion of the edifice of the laws. It is proper, therefore, to take the penal law, which alone embraces all, as the foundation of all the other divisions of the law.

To make a penal law, is to create *an offence*. The distribution of the penal laws will therefore be the same as that of offences. By determining, naming, arranging, numbering offences, we shall have determined, named, arranged, and numbered the penal laws. If this arrangement be well made, all the other kinds of laws will have been well arranged at the same time: order will have been fixed upon a manifest and unalterable foundation: the reign of Chaos will be at an end.

I shall begin with the arrangement itself. I shall afterwards show the considerations which suggested it, and the advantages to be derived from it. In order to understand the commentary, it is necessary to have seen the text.

CHAPTER VI.

OF THE DIVISION OF OFFENCES.

UPON the principle of utility, such acts alone ought to be made offences, as may be detrimental to the community.

An act cannot be detrimental to a community but by being detrimental to some one or more of the individuals that compose it. These individuals may either be assignable* or unassignable.

When there is any assignable individual to whom an offence is detrimental, that person may be either the delinquent himself, or some other person.

When there are persons to whom the act in question may be detrimental, but such persons cannot be individually assigned, the circle within which they may be found is either of less extent than the whole state, or not. If of less, the persons comprised within this lesser circle may be considered for this purpose as composing a body of themselves, comprised within, but distinguishable from the greater body of the whole community.

From a consideration of these circumstances, offences may be divided into four classes:—

1. Acts detrimental in the first instance to assignable individuals other than the delinquent himself. These are private offences.

2. Acts detrimental in the first instance to the delinquent and not to others, except in consequence of the evil he has done to himself. These may be called, for the purpose of contrasting them with the other classes, *personal offences*, or *self-regarding offences*.

3. Acts which may be detrimental to certain unassignable individuals comprised within a particular circle less than that of the state—as a trading company, a corporation, a religious sect. These offences against a portion of the community may, for the purpose of

* Assignable, that is either by name, or at least by description, in such manner as to be sufficiently distinguished from all others; for instance, by the circumstance of being the owner or occupier of such and such goods.

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contrasting them with the other classes, be called *semi-public offences.**

4. Acts which may be detrimental, or which threaten a danger more or less remote to an indeterminate number of unassignable individuals, without it being apparent that any one is more exposed than another. These may be called *offences against the state*, or *public offences.*

The four classes of offences are—

1. Private offences.
2. Self-regarding offences.
3. Semi-public offences.
4. Public offences.

SUBDIVISION OF OFFENCES.

1. *Subdivision of Private Offences.*

In the present period of his existence, the happiness of a man, and his security—in a word, his pleasures, and his immunity from pains—depend, primarily, upon the *condition of his person*, and secondly, upon the exterior objects which surround him. If, therefore, a man suffer in consequence of an offence, it must be either in an *immediate* manner in his person, or in a *relative* manner by reason of his relation with exterior objects. But these exterior objects are *things* or *persons: things*, which he employs for his own advantage, in virtue of what is called *property;* persons, from whom he derives advantages in virtue of services which they are disposed to render to him. This disposition to render those services may be founded simply upon the general connexion which binds all men together, or upon a connexion which unites certain individuals more particularly with others. These more close connexions form a kind of fictitious and incorporeal object of property which is called *condition:* domestic condition, connexion between a parent and child, a husband and wife; political condition, connexion between the citizens of the same place, &c.

When the general connexion among all men is alone considered, their disposition to render services to one another is called *good-will.* This good-will is a favour, and the chance of obtaining this favour is a fictitious property, which is called *honour* or *reputation.* Reputation is therefore a species of wealth, a security for the obtaining those free and gratuitous services which depend upon good-will.

It appears, therefore, that if by any offence an individual becomes a sufferer, it must be in one or other of these four points—person, reputation, property, or condition.

Hence simple private offences may be subdivided into—

Offences against the person.
..... reputation.
..... property.
..... condition.

Offences are called simple, when the individual is affected only in one of these points; complex, when he is affected in more than one at one time, as—

Offences against the person and property.
..... person and reputation.

ORDER I. *Offences against the Person.*

As a man is composed of two different parts—his body and his mind, acts which exert a pernicious influence upon him, may operate upon him either immediately without affecting his will, or mediately through the intervention of that faculty. The constraint which may be produced by such acts may be either positive, compelling him to do what is disagreeable to him—or negative, preventing him from doing what is agreeable to him:—the evil resulting from them mortal or not; if it be not mortal, it will either be reparable or temporary, or irreparable or perpetual.—Again, the pain which a man experiences in his mind will either be a pain of actual sufferance, or a pain of apprehension. Hence we have nine genera or kinds of personal injuries, which, when ranged in the order most commodious for examination, will stand as follows:—

1. Simple corporal injuries, producing uneasiness or temporary suffering.
2. Irreparable corporal injuries—*species*, disfiguration, mutilation, deterioration of an organ as to its essential functions.
3. Simple mental injuries; that is, directly affecting the mind without affecting the body—or vexation.
4. Wrongful restraint or hindrance.
5. ..... constraint.
6. ..... banishment.
7. ..... confinement.
8. ..... imprisonment.
9. ..... homicide.

ORDER II. *Offences against Reputation or Honour.*

In point of reputation there is but one way of suffering, which is by losing a portion of the good-will of others. An individual may be a loser in this respect in either of two ways:—1. By the manner in which he behaves himself; and 2. By the manner in which

* With regard to offences against a class or neighbourhood, it is evident that the fewer the individuals are of which such class is composed, and the narrower that neighbourhood is, the more likely are the persons to whom an offence is detrimental to become assignable, insomuch that, in some cases, it may be difficult to determine concerning a given offence whether it be an offence against individuals or against a class or neighbourhood. It is evident also, that the larger the class or neighbourhood is, the more it approaches to a coincidence with the great body of the state. The three classes, therefore, are liable in a certain degree to run into one another, and be confounded. But this is no more than what is the case, more or less, with all those ideal compartments, under which men are wont to distribute objects for the convenience of discourse.

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others behave, or are thought to behave, towards him. To cause people to think that a man has been guilty of those acts which cause a man to possess less than he did before of the good-will of the community, is what may be styled defamation. When this is done by words, or by such actions as have no other effect than inasmuch as they stand in the place of words, the offence may be styled vilification. But this is not all: as a man may be made to lose the good-will of others, he may also be prevented from acquiring it, either by the interception of the honour which was his due, or by depriving him of the means of obtaining it. Hence we have four species of offences, viz.: —

1. Defamation.
2. Insulting language, or insulting gestures.
3. Usurpation of the reputation of another.
4. Prevention of the acquisition of deserved reputation.

ORDER III. *Offences against the Person and Reputation.*

Attacks upon the person and reputation may spring from different motives, and may have for their object either the immediate pleasure to be derived from sensual gratification, or that sort of reflected pleasure which in certain circumstances may be reaped from the suffering of another.

If the pleasure to be derived from sensual gratification be obtained by consent freely given, if not fairly obtained, the offence may be called seduction; if not freely, it may be called forcible seduction; if consent be altogether wanting, it is called rape. If neither of these offences have been consummated, the offence may be included under the denomination of simple lascivious injury.

When the person and reputation are attacked for the sake of that sort of pleasure which will sometimes result from the contemplation of another's pain, the offence may consist either of actual corporal injury, and may be styled corporal insult, or it may come under the name of insulting menacement. Hence we have six genera or kinds of offences under this head:—

1. Corporal insults.
2. Insulting menacement.
3. Seduction.
4. Forcible seduction.
5. Rape.
6. Simple lascivious injuries.

ORDER IV. *Offences against Property.*

Offences against property are so various, that it is extremely difficult to make an analytical table of them, which shall not itself form a large work. Besides, these offences have received in common use denominations which are so little determinate and uniform, that any definition given of them by a private individual can never be exact. It requires the aid of the legislature to fix their meaning.

Offences of this kind may affect either the right to property, or the enjoyment or exercise of that right.

Offences which affect the possession of property may relate either to an actual possession or to a future possession.

A contingent or future possession may be taken away by two kind of offences: — 1. By the omission of an act necessary to be done before the party enters upon his right: this may be called *non-investment*, or *non-collation of property*. 2. By the commission of some act for the interception of your right — for taking it away, for example, in its transition from the actual possessor, to you the intended possessor; this may be called *interception of property*.

If the possession of an object of which the party is actually in possession be disturbed by the offence, the object of the offence may be his exclusion from the enjoyment of his property without substituting any other person. In this case, it is simply *wrongful divestment* or *spoliation of property*. It may be, that the object of the offence is, that the delinquent may obtain possession of the property himself: it is then *usurpation of property*. It may be, that he intends that it should pass to a third party: it is then *wrongful attribution*, or *collation of property*.

With respect to offences against property which only affect the enjoyment of the object in question; this object must be either a service, or a set of services, which should have been rendered by some person, or else an article belonging to the class of things. In the former case, the offence may be styled *wrongful withholdment* of services. In the latter case, when any object of which any individual has had the enjoyment, ceases so to be enjoyed, it may be either from a change in the intrinsic condition of the thing itself, or in its exterior situation with respect to such individual, which has removed it out of his reach. If the change in the nature of the object be such that no further use can be made of it, it is destroyed; if the change have only diminished its value, it is damaged. If it be simply removed beyond his reach without alteration, it is wrongfully detained.

The object detained may have been obtained from the proprietor, with or without his consent. In the first case, its detention is the non-payment of a debt. In the second case, if the detaining party, knowing that he has no right, intend to detain it always, and, at the same time, not to be amenable to the law, such detention is commonly called theft. If he have employed force or threats against the proprietor or other persons who would have prevented his wrongful occupation of the property, in this case the offence takes the name of robbery. If the consent of the proprietor have been obtained, but if he have been deceived by false appearances, it is

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an act of *sharping* or fraud. If such consent be obtained by the fear of evil resulting from an abuse of power, it is what is commonly called *extortion*.

The foregoing analysis, though imperfect, will suffice to explain the principal genera of offences contained in the fourth and fifth order.

Offences affecting the right of Property.

1. Wrongful non-investment of property.
2. Wrongful interception of property.
3. Wrongful divestment of property.
4. Usurpation.
5. Wrongful investment of property.
6. Wrongful withholding of services.

Offences affecting the use of Property.

7. Wrongful destruction or endamagement.
8. Wrongful occupation.
9. Wrongful detention.
10. Wrongful imposition of expense.
11. Wrongful hindrance of occupation.
12. Theft.
13. Fraudulent acquisition, under false pretences. Sharping.
14. Embezzlement.
15. Extortion.
16. Non-payment of debts.

ORDER V. *Offences against the Person and Property.*

If constraint be applied to the person of the proprietor in the commission of one of the foregoing offences against property, there results from it the following complex offences:—

1. Forcible interception of property.
2. Forcible divestment of property.
3. Forcible usurpation.
4. Forcible investment.
5. Forcible destruction or endamagement.
6. Forcible occupation of moveables.
7. Forcible entry.
8. Forcible detainment of moveables.
9. Forcible detainment of immoveables.
10. Robbery.

ORDER VI. *Offences against Condition.*

A man's condition in life is constituted by the legal relation he bears to the persons who are about him; that is, by *duties*, which by being imposed on the one side, give birth to *rights* or *powers* on the other. These relations, it is evident, may be almost infinitely diversified. Some means, however, may be found of circumscribing the field within which the varieties of them are displayed. In the first place, they must either be such as are capable of displaying themselves within the circle of a private family, or such as require a larger space. The conditions constituted by the former sort of relations may be styled *domestic;* those constituted by the latter, *civil.*

Domestic conditions are founded upon *natural* relations, or upon relations purely *legal.*

In the institution of purely legal conditions, the party favoured may be styled a *superior;* and as both parties are members of the same family, a *domestic superior*, with reference to the party obliged; who in the same case may be styled a *domestic inferior*, with reference to the party favoured. These domestic conditions have generally been constituted by powers rather than rights.

If the power thus vested in the superior be a beneficial one, and for his own advantage, such superior is called a *master*, and the inferior is called a *servant*. If it be for the sake of the inferior, the superior is termed a *guardian*, and the inferior his *ward*.

The natural relations founded upon the cohabitation of men and women, and upon the fruits of their union, have served for a basis upon which to fix their legal relations; that is to say, the rights and obligations of the husband and wife, of the parent and child.

These rights and obligations are the same as in the preceding cases. The husband is in certain respects the guardian, and in other respects the master of his wife: the parent is in some respects the guardian, and in others the master of his children.

We come now to *civil* conditions. These it may well be imagined, may be infinitely various: to make a complete enumeration of them, would be to enumerate every possible mode by which powers and rights may be established; for to be subject to a certain power, or to possess a certain right, is what constitutes a *civil* condition.

This variety, or rather this infinity of conditions, may however be reduced to three classes:—1. Fiduciary charge; 2. Rank; 3. Profession.

A fiduciary charge takes place between two or more interested parties, when, one of the parties being invested with a power or a right, is bound, in the exercise of this power and this right, by certain rules, for the advantage of the other party. This relation constitutes two conditions—the *trustee*, and the *trustor*, called in lawyers' language *cestui que trust*.

Rank is often combined with the circumstance of a fiducial trust, but there are certain cases in which it can be considered as altogether distinct. The rank of knighthood is constituted—how? By prohibiting all other persons from performing certain acts, the performance of which is the symbol of the order, at the same time that the knight in question and his companions are permitted to perform them;—for instance, to wear a ribbon of a certain colour, or in a certain manner—to call himself by a certain title—to use an armorial seal with a certain mark upon it. The law creates a benefit for these individuals, by subjecting all others to the negative duty of abstaining from these acts.

The condition of a professional man stands

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upon a narrower footing. To constitute this condition there needs nothing more than a permission given him on the part of the legislator to perform those acts, in the performance of which consists the exercise of his profession: to give or sell his advice or assistance in matters of law or of physic—to give or sell his services as employed in the executing or overseeing of a manufacture or piece of work of such or such a sort. The permission in the greater number of cases is not even expressly granted—the law merely does not prohibit, &c.; but there are cases in which the law, whilst it permits certain persons to follow certain trades, prohibits those who have not received the same permission. This is called in certain circumstances *monopoly*—in others, *privileged profession*.

By forbearing to subject you to certain disadvantages to which it subjects an alien, the law confers upon you the condition of *natural subject*—by subjecting him to them, it imposes upon him the condition of an alien. By conferring on you certain privileges or rights which it denies to a *roturier*, the law confers on you the condition of a *gentilhomme*—by forbearing to confer on him these privileges, it imposes on him the condition of a *roturier*.*

This analysis, which is only a sketch of the subject, may serve to explain what is a *condition*, and what offences may be committed against a condition. In order fully to analyze all these offences, it would be necessary to take each condition separately, to enumerate all its *benefits*, or all the *charges* of which it is composed, and to show every method by which it is possible to avoid those *charges*, or to be deprived of those *benefits*. But this process would lead to a great number of repetitions, for the avoidance of which it will be more advisable to exhibit the different kinds of offences which are common to all conditions, and afterwards the incidental offences peculiar to certain conditions.

Species of Offences against Condition.

1. Wrongful non-investment of condition.
2. ..... interception .....
3. ..... usurpation .....
4. ..... investment .....
5. ..... divestment .....
6. ..... abdication .....
7. ..... refusal .....
8. ..... imposition .....
9. ..... disturbance of rights.

Offences incident to conditions which imply Powers.

10. Abuse of powers.
11. Non-rendering of due service.
12. Misbehaviour.
13. Passive corruption.
14. Active corruption.
15. Peculation.

Offences incident to conditions which imply Subordination.

16. Flight.
17. Disobedience.
18. Non-rendering of required services.

Offences incident to the Married Condition.

19. Adultery.
20. Polygamy.

SECOND CLASS.

Subdivision of Self-regarding Offences.

Self-regarding offences are, properly speaking, errors, or acts of imprudence. We have already seen, in examining the limits which separate morals and legislation, that there are strong reasons for not treating these offences in the same manner as offences of the other classes. To subject them to punishment, would be for the laws themselves to cause a greater evil than those which they would pretend to prevent.

It is, however, useful to class these offences:—1. To show in general what are the offences which ought not to be subject to the severity of the laws; 2. That those offences may be discovered with respect to which exception should be made for particular reasons.

The subdivision of these offences is exactly the same with that of private offences. The evil which we may experience from others, we may produce for ourselves.

Genera of Personal or Self-regarding Offences.

ORDER I. *Offences against the Person.*

1. Simple corporal injuries—*Ex.* Fasting, extreme continence, self-mortification, intemperance.
2. Irreparable corporal injuries—*Ex.* Mutilations, loss of members by negligence or temerity, or in consequence of excess.
3. Simple mental injuries—*Ex.* Religious fears arising from other causes than acts hurtful to society; ennui from indolence; weakness of the intellectual faculties from excess or inaction.
4. Restriction. } *Ex.* Privations or ascetic
5. Constraint. } practices in consequence of religious vows.
6. Banishment. }
7. Imprisonment. } *Ex.* Constrained abode in a religious house in consequence of monastic vows—forced pilgrimage in consequence of religious vows.
8. Confinement. }
9. Suicide.—Death in consequence of a challenge given or accepted.

* The conditions themselves having nothing that corresponds to them in England, it was necessary to make use of the foreign terms.

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ORDER II. *Offences against Reputation.*

1. Indiscreet imprudent confessions.
2. Invectives against one's self.
3. Neglect of reputation.

ORDER III. *Offences against Reputation and Person.*

1. Loss of virginity before marriage.
2. Indecent practices in sight of another.

ORDER IV. *Offences against Property.*

1. Waste of his own property.
2. Neglect of the means of acquisition.
3. Prodigality, *Ex.* gaming.
4. Burthensome acquisition.
5. Imprudent agreement.

ORDER V. *Offences against Person and Property.*

1. Mutilation which prevents the exercise of a profitable trade.
2. Diseases brought on by intemperance or excess, and which are productive of expense and loss.

ORDER VI. *Offences against Condition.*

1. Investment with a condition injurious to one's self; — improvident marriage.
2. Divestment of a condition beneficial to one's self; — rash divorce.

THIRD CLASS.

Subdivision of Semi-public Offences.

It is neither an evil which is past, nor one which is present, which can constitute a semi-public offence. If the evil were present or past, the individuals who had suffered, or were suffering from it, would be *assignable:* it would become a private offence. What, then, is the evil which constitutes a semi-public offence? It is a future evil; that is to say, an evil not yet realized, but which is probable, and takes the name of danger.

This danger may threaten all the points in which an individual can suffer. Hence the subdivision of offences of this class must be the same with that of private offences.

ORDER I. *Semi-public Offences against the Person.*

1. Simple corporal injuries,
2. Irreparable corporal injuries, } *Ex.* 1. Manufactures injurious to the health. 2. Sale of unwholesome food. 3. Artificial famine.
3. Simple mental injuries. — *Ex.* Exposure of ulcers or disgusting diseases; obscene exhibitions; false reports of disasters in time of war, or other public misfortunes; publication of frightful tales of sorceries, ghosts, vampires, &c.
4. Menaces. — Placards, writings; letters containing threats against a certain class, profession, party, sect, &c. &c.
5. Restriction.
6. Constraint. } *Ex.* Speeches, hand-bills, placards designed to constrain or restrict individuals with regard to actions in themselves left free, as illuminations, processions, assemblies, &c.
7. Banishment.
8. Confinement. } *Ex.* Communication interrupted by the destruction of roads, bridges, inns, &c.
9. Imprisonment. — There is no offence corresponding with this in the third class.
10. Homicide. — *Ex.* Murder committed in a party quarrel (a private offence with regard to the individual, a semi-public offence with regard to the party.)

ORDER II. *Offences against Reputation.*

1. Defamation. — *Ex.* Criminal or dishonest proceedings attributed to certain classes, as protestants, catholics, monks, &c.
2. Invectives. — *Ex.* Speeches, writings, prints tending to express hatred or contempt against a certain class of individuals without real and clearly ascertained cause.

ORDER III. *Offences against Person and Reputation.*

There are no offences corresponding with this order in this class.

ORDER IV. *Offences against Property.*

The same denominations as for private offences. An offence is semi-public — 1. When the thing, or the service which it affects, belongs in common to societies of individuals, or to the officers of an entire class; 2. When the number of persons hurt, or exposed so to be, is too great for the individual to be held liable to render a separate account to each one; as in the case of a fraudulent lottery, false reports affecting the public funds, &c.

ORDER V. *Offences against Person and Property.*

List of physical calamities —

1. Collapsion or fall of large masses of solid matter, such as decayed buildings, rocks, masses of snow, and mines.
2. Inundation.
3. Drought.
4. Tempest.
5. Conflagration.
6. Explosion.
7. Earthquake.
8. Pestilential winds.
9. Contagious maladies.
10. Famine and other species of dearth.
11. Evils produced by destructive animals, beasts of prey, locusts, ants, insects, &c.

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12. Evils produced by children, maniacs, idiots, &c.

An individual may be guilty of an offence of this kind — 1. In as far as any imprudent act of his may contribute to give birth to any of these calamities, as by breaking quarantine, by importing merchandise from infected places, &c. 2. In as far as he may fail to do what he ought to do towards preventing them, such failure may be an offence.

N.B. These calamities do not always fall upon the *person and property*, so that these offences do not exactly correspond with those of the fifth order; but this is most frequently the case.

ORDER VI. *Offences against Condition.*

Offences against the matrimonial condition: *Ex.* Attacking the validity of marriage among persons of a certain class or religious sect, as Protestants, &c.

Offences against the parental or filial condition: *Ex.* Attacking the legitimacy of children born in a certain class, as Protestants, &c.

Offences against civil conditions are all in one sense semi-public, inasmuch as the possession of a certain condition belongs to a certain class.

FOURTH CLASS.

Subdivision of Public Offences.

The offences by which the public interest may be affected, are of very various and complex kinds. The following subdivision is incomplete, but an attempt to make it complete, by following out the exhaustive method, would have been too wearisome. Upon the present occasion, one of the great difficulties presented by the subject arises from the fact, that many offences of this class have not yet received names, and that a recurrence to long and obscure periphrases would therefore be rendered necessary.

The science of legislation being extremely imperfect, the nomenclature cannot be good; and with a bad nomenclature, it is not possible to make a good distribution.

ORDER I. *Offences against External Security.*

Such offences as have a tendency to expose the nation to the attacks of a foreign enemy:

1. Treason, either negative or positive, in favour of foreign enemies.
2. Espionage in favour of foreign rivals, not yet enemies.
3. Injuries to foreigners at large, including piracy.
4. Injuries to privileged foreigners, such as ambassadors.

ORDER II. *Offences against Justice.*

The direct object of the tribunals ought to be to maintain the laws, that is to say to punish those offences which violate them.

Offences against justice are of two sorts —

I. Those which may be committed by the officers of justice in opposition to their duties.

II. Those which may be committed by other persons, in opposition to, or to mislead the tribunals.

1. Improper exercise of judicial office.
2. Abuse of judicial power.
3. Usurpation of judicial power.
4. Collusion, *syn.* corruption on the part of judicial officers.
5. Peculation by judicial officers.
6. Exaction, *syn.* extortion on the part of judicial officers.
7. Non-rendering of services due to judicial officers.
8. Non-denouncing of offences to judicial officers.
9. Disobedience to judicial orders.
10. Contumacy.
11. Breach of banishment.
12. Prison breach.
13. False oaths, *syn.* perjury.
14. Rebellion against justice.
15. Disturbance of judicial powers.
16. Judicial vexation.

ORDER III. *Offences against Police.*

Police is in general a system of precaution, either for the *prevention of crimes* or of *calamities.* It is destined to prevent evils and provide benefits.

The acts which oppose the police, or which oppose the precautions which it institutes, form as many offences as there are kinds of precautions; but as their nature is varied according to times and circumstances, so must the particular enumeration of them be.

The business of police may be distributed into eight distinct branches: —

1. Police for the prevention of offences.
2. Police for the prevention of calamities.
3. Police for the prevention of endemic diseases.
4. Police of charity.
5. Police of interior communications.
6. Police of public amusements.
7. Police for recent intelligence and information.
8. Police for registration, for preserving the memory of different facts interesting to the public, such as births, marriages, deaths, population, number of houses, situation and qualities of different properties, contracts, offences, procedure, &c.

ORDER IV. *Offences against the Public Force.*

Such offences as have a tendency to oppose or mislead the operations of the military force destined for the protection of the state either against its enemies from without or from within, which the government could not overcome without an armed force.

1. Offences affecting the titles and functions of military officers.

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2. Desertion.

3. Offences affecting the several sorts of things appropriated to the purposes of war: such as arsenals, ammunition, military magazines, fortifications, dock-yards, ships of war, and so forth.

ORDER V. *Offences against the National Wealth.*

The national wealth is the total of the wealth of all the nation. Those acts which tend to diminish the wealth of individuals, tend to diminish the national wealth. But what are the specific offences — what are the actions of this kind, which ought to be prohibited? The science of political economy leads to the conclusion, that government ought only to interfere for the protection of individuals in the acquisition and enjoyment of property, and seldom to direct as to the manner of acquiring and enjoying; the greatest obstacles to the increase of national wealth having almost always been found in those laws which have sought to increase it.

The most conspicuous offences of this order are —

1. Idleness.
2. Prodigality.

ORDER VI. *Offences against the Public Treasure.*

Such acts as have a tendency to diminish the public revenue, by opposing its collection, or misdirecting the employment of the funds destined to the service of the state: —

1. Non-rendering of services.
2. Non-payment of taxes — smuggling.
3. Destruction of the goods of the community, roads, public buildings, &c.

The state, considered collectively, may have possessions, and consequently suffer in these possessions, in the same manner as an individual.

ORDER VII. *Offences against Population.*

Such offences as tend to diminish the number of members in the community: —

1. Emigration.
2. Suicide.
3. Prevention of births.

The influence of these things upon population has at all times been nearly imperceptible; the amount of population having, in nearly all circumstances, been found to correspond with the means of subsistence.

ORDER VIII. *Offences against the Sovereignty.*

It is hardly possible to describe these offences, unless the constitution to which they refer have been previously laid down. There are many constitutions in which it is difficult to resolve the question, Where does sovereign power reside?

The following is the simplest idea which can be formed of it. The collective name of the government is commonly given to the total assemblage of persons charged with the different political functions. There is commonly in the state one person, or a body of persons, which assigns and distributes to the members of the government their departments, their functions, and their prerogatives — which exercises the legislative power — which directs and superintends the administrative power. The person or the body which exercises this supreme power, is called the *sovereign*. Offences against the sovereignty are those which tend to oppose or mislead the operations of the sovereign, those things which cannot be done without opposing or misleading the operations of the different parts of the government.

1. Rebellion, offensive or defensive.
2. Political defamation — political libels.
3. Conspiracy against the person of the sovereign, or the form of government.

ORDER IX. *Offences against Religion.*

For combating every species of crime which can be committed by man, the state has only two great instruments — rewards and punishments: — punishments applicable everywhere, and on all ordinary occasions — rewards necessarily reserved to a small number of extraordinary occasions. The distribution of rewards and punishments is often opposed or misdirected, or rendered useless, because the state has neither eyes which can see everything, nor hands which can attend to everything. Religion is calculated to supply this deficiency of human power, by inculcating upon the minds of men the belief that there is a power engaged in supporting the same ends, which is not subject to the same imperfections. It represents the Supreme Invisible Being as disposed to maintain the laws of society, and to reward and punish according to infallible rules, those actions which man has not the means of rewarding and punishing. Everything which serves to preserve and strengthen in the minds of men this fear of the Supreme Judge, may be comprehended under the general name of Religion; and for the purpose of clearness of discourse, we may often speak of religion as if it were a distinct being, an allegorical personage, to whom certain functions are attributed. Hence, to diminish or pervert the influence of Religion, is to diminish or pervert, in the same proportion, the services which the state might derive from it, for the repression of crime or the encouragement of virtue. Everything which tends to weaken or mislead the operations of this power, is an offence against Religion.*

* To prevent objections, I remark here, that religion is here only considered as an object of

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Offences which tend to weaken the force of the religious sanction are —

1. Atheism.
2. Blasphemy.
3. Profanations — *syn.* actions directed against any object of religious worship.

Offences which tend to pervert the employment of the religious sanction, may be comprehended under the name of caco-theism, and are divisible into three branches: —

1. *Pernicious dogmas:* dogmas attributing to the divinity dispositions opposed to the public welfare; for example, that he has created sources of suffering in greater abundance than sources of pleasure: dogmas imposing misseated, excessive, or useless punishments: suborning dogmas, which grant pardon where punishment has been deserved, and which offer rewards for actions which deserve none, &c.

2. *Frivolous dogmas:* dogmas which respect belief alone, and from which no moral good is derivable, and from which many ill effects result between those who admit and those who reject them.

3. *Absurd dogmas:* another means of attributing malevolence to the divinity, making him the author of an obscure and unintelligible system of religion.

Caco-theism has been productive of atrocious crimes. It has degraded the populace, persecuted the wise, and filled the minds of men with vain terrors; has forbidden the most innocent pleasures, and is the most dangerous enemy of correct morals and legislation. Punishments directed against the propagators of these errors would be well deserved, for the evil which results from these errors is real: but such punishments would be inefficacious, superfluous, and ill-adapted. There is but one antidote to these poisons — that is, truth. These dogmas, once exposed as false, cease to be pernicious, and are only ridiculous. The opinion which supports them ought to be attacked like every other opinion. It is not the sword which destroys errors, but the liberty of examining them. Persecution for opinion's sake exhibits the monstrous union of folly and tyranny.

The same things must be admitted with respect to atheism, though atheism may be an evil in comparison with a system of religion conformable to the principle of utility, consoling the unhappy, and propitious to virtue. Yet it is not necessary to punish atheism: the moral sanction is sufficient for its condemnation. An opinion only is here stated, but the proofs of that opinion will be produced elsewhere.

CHAPTER VII.

ADVANTAGES OF THIS CLASSIFICATION.

OMITTING others of minor importance, the following appear to be the principal advantages of this classification: —

1. It is the most natural, that is to say, the most easy to be understood and remembered. In what does a natural classification consist? In reference to a given individual, it is that which first presents itself to his mind, and which he comprehends with the greatest facility. Hence, when an individual invents a classification for himself, it appears, and is, in respect to himself, the most natural one. But with reference to men in general, the most natural classification is that which presents objects to them according to their most striking and interesting qualities. Now there is nothing more interesting or striking to a sensible being, than human actions considered in reference to the mischief which may result from them to himself or others.

2. This classification is simple and uniform, notwithstanding the multiplicity of its parts, because they are all analogous, one following the other, allowing the bonds which connect them, and their points of contact and resemblance, to be perceived at the first glance.

To know the first class, is to know the second and the third. The fourth rests upon the same foundation, though the points of connexion are less apparent than in the others. If the offences of the first three classes were not mischievous, those of the last would not be so either.

3. This classification is best adapted for discourse; best adapted for announcing the truths connected with the subject.

In every species of knowledge, disorder in language is at once the effect and the cause of ignorance and error. Nomenclature can only be perfected in proportion as truth is discovered. It is impossible to speak correctly, unless we think correctly; and it is impossible to think correctly, whilst words are employed for registering our ideas, which words are so constituted that it is not possible to form them into propositions which shall not be false.*

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political utility, and not with reference to its truth; whilst as to the effects of religion in preparing us for a better life, or giving us an assurance of its possession, — these are points from which the legislator can draw no assistance.

It is better to say, an offence against religion, the abstract entity, and not an offence against God, the self-existing Being. For in what manner can a feeble mortal injure the Eternal, and affect his happiness! In what class shall this offence be ranked? Could it be an offence against his person? his property? his reputation? or his condition?

* When a nomenclature has been formed respecting a collection of things before their nature is known, it is impossible to draw from it any general propositions which will be true. Take *oils*, for example: under the same name of *oils* have been comprehended oil of olives and oil of almonds, sulphuric acid and carbonate of pot-

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4. This classification is complete. There is no imaginable law to which it is not possible by its means to assign its proper place. If this law be directed against an action mischievous in any kind of manner whatsoever: if it be a capricious law—a mischievous law, it will also have its place, but it will be among acts which are mischievous—it will be itself classed among offences.

5. It displays intention. It is so contrived that the very place which any offence is made to occupy, suggests the reason of its being put there. It serves to indicate not only that such and such acts *are* made offences, but *why* they *ought* to be so. By this means, while it addresses itself to the understanding, it recommends itself in some measure to the affections. By the intimation it gives of the nature and tendency of each obnoxious act, it accounts for, and in some measure vindicates the treatment which it may be thought proper to bestow upon that act in a way of punishment. To the subject, then, it is a kind of perpetual apology, showing the necessity of every defalcation, which, for the security and prosperity of each individual, it is requisite to make from the liberty of every other. To the legislator, it is a kind of perpetual lesson, serving at once as a corrective of his prejudices, and as a check upon his passions. Is there a mischief which has escaped him?—in a natural arrangement, if at the sametime an exhaustive one, he cannot fail to find it. Is he ever tempted to force innocence within the pale of guilt?—the difficulty of finding a place for it, advertises him of his error. An imaginary crime cannot escape among a crowd—it cannot be classed under such a methodical arrangement. Such are the uses of a map of universal delinquency laid down upon the principle of utility;—such the advantages which the legislator as well as the subject may derive from it. Abide by it, and everything which is arbitrary in legislation vanishes. An evil-intentioned or prejudiced legislator durst not look it in the face. He would proscribe it, and with reason: it would be a satire upon his laws.

6. This classification is universal. Governed as it is by a principle which is recognised by all men, it will serve alike for the jurisprudence of all nations. In a system of law framed in pursuance of such a method, the language would serve as a glossary, by which all systems of positive law might be explained, while the matter would serve as a standard by which they might be tried. Thus illustrated, the practice of every nation might be a lesson to every other, and mankind might carry on a mutual intercourse of experiences and improvements as easily in this, as in every other walk of science.

It might thus possess a utility independent of the use which might be made of it by the governments of the world. If the different penal laws in the world were arranged according to this method, all their imperfections would become visible: without argument respecting them, they would be discovered by inspection. Here would be offences omitted, there imaginary offences; here redundant laws containing numerous descriptions of different kinds of theft, or personal offences, &c. instead of one general law. *This* classification would therefore prove, in legislative science, what instruments of comparison, such as the barometer and thermometer, have been found in physical science.

I must, however, recur to the principal advantage of this classification. Under it all offences of the same class are ranged under the same head, in virtue of some common quality which unites and characterizes them. Offences which compose one class have therefore among them like properties; and they have, at the same time, properties differing from those of offences of a different class. It hence results, that it is possible to apply general propositions to each of such classes, which may serve as the characteristics of such classes.

A collection of these characters it may here be proper to exhibit. The greater number of them we can bring together, the more clearly and fully will the nature of the several classes, and of the offences of which they are composed, be understood.

Characters of Class 1—composed of *private* offences, or offences against assignable individuals:—

1. When arrived at their last stage (the stage of consummation) they produce, all of them, a mischief of the first as well as of the second order.

2. The individuals whom they affect in the first instance,* are constantly *assignable*. This extends to all—to *attempts* and *preparations*, as well as to such offences as have arrived at the stage of consummation.

3. They will admit of *compensation*.

4. They admit† also of *retaliation*.

ass.—What true propositions can be deduced respecting the *delicta privata* and the *delicta publica*, the *delicta publica ordinaria* and the *delicta publica extraordinaria*, established by Heineccius in explaining the Roman laws? What can be deduced from the *felonies*, the *præmunires*, the *misdemeanours* of the English laws?—from the *penal cases*, the *civil cases*, the *private* and the *public* offences of all laws? These are objects composed of such disproportionate parts, of words referring to such heterogenous things, that it is impossible to form respecting them any general proposition.

* That is, their primary mischief.

† *Admit.*] I mean, that *retaliation* is *capable* of being applied to the cases in question, not that it *ought* always to be employed. Nor is it capable of being applied in every *individual* instance of each offence, but only of some individual instance of each *species* of offence.

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5. There is always some person who has a natural and peculiar interest to prosecute them.

6. The mischief they produce is *obvious*.

7. They are everywhere, and must ever be obnoxious to the censure of the world.

8. They are less apt than semi-public and public offences, to require different descriptions in different states and countries.

9. By certain circumstances of aggravation, they are liable to be transformed into semi-public, and by certain others, into public offences.

10. In slight cases *compensation* given to the individual affected by them, may be a sufficient ground for remitting punishment; for if the primary mischief has not been sufficient to produce any alarm, the whole of the mischief may be cured by compensation.

Characters of Class 2—consisting of SELF-REGARDING offences — offences against *one's self*: —

1. In individual instances, it will often be questionable whether they are productive of any primary* mischief at all; secondary, they produce none.

2. They do not affect any other individuals assignable, or not assignable, except in as far as they affect the offender himself, unless by possibility in particular cases; and in a very slight and distant manner they affect the whole state.

3. They admit not, therefore, of compensation.

4. Nor of retaliation.

5. No person has naturally any peculiar interest to prosecute them, except in as far as, in virtue of some *connexion* he may have with the offender, either in point of sympathy or interest, a mischief of the derivative kind may happen to devolve upon him.

6. The mischief they produce is apt to be unobvious, and in general more questionable than that of any of the other classes.

7. They are, however, apt many of them to be more obnoxious to the censure of the world than public offences, owing to the influence of the two false principles of ascetism and antipathy.

8. They are less apt than offences of any other class, to require different descriptions in different states and countries.

9. Among the inducements to punish them, antipathy against the offender is apt to have a greater share than sympathy for the public.

10. The best plea for punishing them is founded on a faint probability there may be, of their being productive of a mischief, which, if real, will place them in the class of public offences, chiefly in those divisions which are composed of offences against population, and offences against the national wealth.

Characters of Class 3 — composed of SEMI-PUBLIC offences, or offences affecting a whole subordinate *class* of persons: —

1. As such, they produce no primary mischief. The mischief they produce, consists of one or other or both branches of the secondary mischief produced by offences against individuals, without the primary.

2. The persons whom they affect in the first instance, are not individually assignable.

3. Offences of this class are apt, however, to involve or terminate in some primary mischief of the first order, which, when they do, they advance into the first class, and become private offences.

4. They admit not of compensation.

5. Nor of retaliation.

6. There is never any one particular individual whose exclusive interest it is to prosecute them. A circle of persons may however always be marked out, within which may be found some who have greater interest to prosecute, than any who are out of that circle have.

7. The mischief they produce is in general pretty obvious, but less so than that of private offences.

8. They are rather less obnoxious to the censure of the world than private offences.

9. They are more apt than private and self-regarding offences, to require different descriptions in different countries, but less so than public ones.

10. There may be ground for punishing them before they have been proved to have occasioned, or to be about to occasion mischief to any particular individual. The extent of the evil makes up for the uncertainty of it.

11. In no cases can satisfaction given to any particular individual affected by them, be a sufficient ground for remitting punishment; for by such satisfaction, it is but a part of the mischief of them that is cured.

Characters of Class 4 — consisting of PUBLIC offences, or offences against the *state* in general: —

1. As such, they produce not any primary mischief; and the secondary mischief they produce, which consists frequently of danger without alarm, though great in *value*, is in specie very indeterminate.

2. The individuals whom they affect in the first instance are constantly unassignable, except in so far as by accident they happen to involve or terminate in offences against individuals.

3. They admit not of compensation.

4. Nor of retaliation.

* Because the person who in general is most likely to be sensible of the mischief (if there be any) in the offence, viz. the person whom it most affects, shows by his conduct that he is not sensible of it.

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5. Nor is there any person who has naturally any particular interest to prosecute them, except in as far as they appear to affect the power, or in some other manner the private interest of some person in authority.

6. The mischief they produce is comparatively unobvious.

7. They are comparatively little obnoxious to the censure of the world.

8. They are more apt than any of the other classes to admit of different descriptions in different states and countries.

9. They are constituted in many cases by some circumstances of aggravation, superadded to a private offence. They are, however, even in such cases, properly ranked as public offences, inasmuch as the mischief they produce, in virtue of the properties which aggregate them to that class, eclipses and swallows up those which they produce in virtue of those properties which aggregate them to the first class.

10 and 11. These characters are the same as in the case of semi-public offences.

CHAPTER VIII.

TITLES OF THE PENAL CODE.

THESE may be distinguished into particular and general titles.

Each head of offence constitutes a particular title.

Those are called General titles, under which matters which belong in common to a great part of the particular titles are contained. The first advantage is — repetitions avoided; the second advantage — views extended and confirmed.

The following is the catalogue of the general titles which ought to be treated of in the penal code: —

1. Of persons subject to the law.
2. Of negative and positive offences.
3. Of principal and accessory offences.
4. Of co-delinquents — that is, associates in committing crimes.
5. Of grounds of justification.*
6. Of grounds of aggravation.
7. Of grounds of extenuation.
8. Of grounds of exemption.
9. Of punishments.
10. Of indemnification, and other satisfactions to the party injured.

With respect to the particular titles, they are all formed upon the same model: if the first is known, all the others are known also.

Here follows an example: —

* Grounds; that is to say, circumstances which affect the necessity of punishment—which render it greater or less, or altogether unnecessary.

TITLE I. *Of Simple Corporal Injuries.*

SECTION I. PRINCIPAL TEXT.

There is simple corporal injury, when, without lawful cause(a) an individual has caused(b) or contributed to cause to another, (c) suffering or corporal uneasiness, (d) which is not followed by any ulterior (e) corporal evil.

SECTION II. MEANS OF PUTTING AN END TO THE OFFENCE.

It is here that the following matters should

(a) *without lawful cause.*] This requires a reference to the general head of grounds of justification.

(b) *caused.*] It is of no consequence, either in what manner, or by what means, the mischief has been done—whether the person have been beaten or wounded with or without instruments, — whether it have been occasioned by a stone or other solid body — by a current of air or other liquid — by water, light, heat, or electric matter directed against the party injured — or by presenting some disgusting or hideous object to the touch, the taste, the smell, the hearing, or the sight — or by administering, by force or otherwise, a drug producing vomiting, fainting, or other inconvenience.

It is of no consequence that the means employed have been indirect; for example, whether a dog or any other animal have been employed as the instrument, or whether, by false insinuations or other artifices, an innocent person, or even the individual himself, have been employed for the same purpose; as if he have been persuaded to walk into a trap or a ditch which had been concealed; or voluntarily to expose himself to the action of causes injurious to his health.

The offence may be equally committed by removing the remedy of which he would stand in need against some approaching evil of the same nature: as, for example, if food be removed from the reach of a man pressed with hunger — if the medicines of a sick man are taken away.*

(c) *another.*] Refer to the title which treats of *self-regarding offences*, which corresponds to this species of private offences.

Refer also to the title which treats of *semi-public offences* of the same kind; from which it would be proper to refer again to the different codes established for the regulation of trade and manufactures, from the abuse of which suffering may result, corporal uneasiness or danger to persons not assignable, — such as those relating to innkeepers, tallow-chandlers, tanners, distillers, braziers, &c.

(d) *uneasiness.*] It is of no consequence that the point of contact which is the cause of it is slight. It suffices for its production that it takes place against the will of the party injured. Hence the evil of this offence may vary, from the slightest uneasiness to the most extreme torture.

(e) *ulterior.*] If any ulterior damage accrue, it must be referred to some other title of offences, as irreparable corporal injuries — imprisonment, &c. — Refer to the *Table of Offences.*

* That these details are too particular, is an objection which requires proof. The necessity of those things which some would consider as minute may be easily proved.

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be placed, that reference may be made to them: —

1. Right or power of resistance against an unjust attack.

2. Right, or power and obligation, to lend assistance to another against an unjust attack.

3. Right, power, and obligation to the officers of police to lend assistance.

4. Right and obligation for individuals to call for the assistance of the officers of police to cause an unjust attack to cease.

Punishments. — 1. Fine ([h]) at option ([i]) and discretion ([k]), which shall not exceed the ——th ([l]) part ([m]) of the property of the delinquent.

2. Imprisonment ([n]) at option and discretion, which shall not exceed the term (for example) of one year. ([o])

3. Security for good conduct ([p]) at option and discretion.

4. In serious cases ([q]), banishment from the presence ([r]) of the injured party for a time or for ever.

5. Costs of suit at option and discretion.

As many letters, so many references to different sections of the general title of punishments. There, for example, would be explained the expressions *at option* and *discretion*. *At option* is a concise phrase for expressing that it is lawful for the judge to employ or not to employ this punishment. *At discretion*, signifies that the judge ought to employ a certain quantity of this punishment, but that he may employ so much or so little as he may judge proper, provided that he keep within the limits prescribed by the general rules under the title of punishments.

Indemnifications. — As to what regards indemnifications, reference may be made to the general title which treats of them; reserving the details of those particular dispositions which may be judged convenient, for this place.

It is here that reference may be made to procedure. Procedure *ad compescendum*, which consists in putting an end to an offence, can have no place here, unless the crime be complicated with one of those which attack the liberty of the person.

Procedure *ad puniendum et ad satisfaciendum*, are the two branches of which the application is the most universal, especially the first.

Whilst as to procedure *ad præveniendum*, reference should be made to the general title of punishments, which treats of security to be required for good conduct.

Reference to the title Grounds of Exemption.

Reference to the title Grounds of Aggravation.

I place — 1. The grounds of aggravation, which do not cause the offence to be referred to another name; 2. Those which add to it the qualities designated by some appellation of the same class; 3. Those which transfer it to the class of semi-public offences; 4. Those which transfer it to the class of public offences.

Reference to the Grounds of Extenuation.

If there be in an offence any circumstance of aggravation, the quantity of the ordinary punishment may be in consequence increased, or an ulterior punishment of a different kind may be permitted. This new punishment may be called by the technical name of extra punishment. In the same manner, in the case of extenuation, there might be established an *infra punishment*.

Another Example: — In order to continue to give an idea of the plan, let us take an example from among offences which relate to property. Here a new order of things presents itself. That which has been considered, appeared only to relate to what is penal — the following article will recal the idea of the civil code. We must not, however, forget that an offence is still under consideration.

I choose *waste*, as presenting the most simple case.

PRINCIPAL TEXT.

There is injurious waste, when, without lawful cause ([a]), an individual destroys, or contributes ([c]) to destroy or injure ([d]) a thing ([e]) of some value. ([f])

In order to simplify the case, I leave out that part which concerns evil intention: — hence, in the supposition, the hurtful act only draws the quality which renders it punishable from some inadvertency, or some error in what respects the right.

([a]) *lawful cause.*] Here to the ordinary grounds of justification, it is necessary to add a new one — property in the thing. But what is this property? — how shall it be shown that it is possessed? Here, then, a reference to titles to property is necessary.

([c]) *contributed.*] the same reference.

([d]) *to destroy* or *injure.*] To destroy a thing, is entirely to deprive it of those properties, in virtue of which it may be useful to man: to injure, is partly to deprive it of these qualities. If, instead of the properties which are altogether destroyed, it becomes possessed of others of less value, this amounts to the same thing.

Destruction and injury differ only in the quantity of the value destroyed.

Destruction is injury carried to its completion — injury is partial destruction.

([e]) *thing.*] Reference to the general title which treats of things and their kinds.

([f]) *value.*] It is of no consequence whether it be a thing which possesses a commercial value — that is to say, whether it be of a nature to be useful to a great multitude of persons without distinction, as for example, eatables — or whether it have only a particular value, which would be useful only to a certain individual; for example, a paper on which he had made notes which were only useful to himself.

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It is of no consequence whether the value be constant or occasional, provided, at the time of its destruction, it possessed an actual value, or would have had it in future: as, if it were a fence which preserved a plantation, or a bank of earth raised for a momentary service.

In following out the plan, the meaning of the word *value* would be explained in such manner that it will not be doubtful whether it extends to a value which does not exist, except by reference to a certain place as a boundary; to that which arises only from agreement, as a paper which contains a contract; to that which is only representative, that is to say, which is nothing except as a means of procuring a thing, whose value is intrinsic; to that which is nothing except in relation to the public—as a writing proving that a certain individual is subjected for the public good to a certain obligation.

Of some value.] The value of a thing may be reputed as nothing, when it is such that it may be presumed that a person of any humanity or politeness would voluntarily give it up to whosoever would take the trouble to ask for it, and to take it; for example, the gleaning after the harvest, the wild fruits, the hedge nuts, &c.

But to destroy this presumption, any act on the part of the proprietor, which shows that he intends to refuse this permission, either to the public at large, or to any individual in particular, is sufficient.

Such is the plan: the other sections should correspond with these.

CHAPTER IX.

FIRST GENERAL TITLE OF THE CIVIL CODE,*

Of Things.

WE begin with *things*. Robinson Crusoe is represented as living many years, without exercising his power over persons. He could not have been so long without exercising his power over things.

The species into which things may be divided are innumerable, and there is not one of them which may not fall under the cognizance of the law; since all the productions of art, all the objects in nature, are comprised within its domain. If it were necessary to mention each separately, the Encyclopædia itself would only form one chapter of legislation. But in this immensity, we have occasion only to notice those things respecting which the law has established differences in the manner of acting with regard to them—those things which have served it as a foundation upon which to build obligations and rights. By means of certain general divisions, we shall be able easily to govern this vast subject. We shall arrange them according to their source, their employment, and their nature.

Division I. Things are either *natural* or *artificial*.—To the first head may be referred those things to which their respective names may be applied when in the condition in which they come from the hands of nature, before they have been modified by the labour of man; that is to say, the earth, its different parts, and the productions to which it gives birth. Under the name of *artificial* or *factitious*, those may be comprehended which only acquire their respective names in virtue of qualities given them by human labour. Hence, a field, though cultivated—a vine, though planted—even a live hedge, would be natural things. A house, a wine-press, a dead hedge, would be artificial things. These two classes will meet in an infinity of points, and there is no fixed line of demarcation by which to separate them. Still, a line of demarcation will be absolutely necessary in a code of laws. It is necessary to have one among those objects with which the law intermeddles for the sake of peace; without it, disputes would be interminable. The line will be more or less arbitrary, but this is of no consequence, provided that it exist.

Division II. *Things moveable* and *things immoveable*.—Another positive line of demarcation. Houses are generally immoveable. But they have been made of wood, and of iron, and have traversed along the roads.† Like the Scythians of old, the Tartars of our days are only lodged in this manner. Ships are houses. Some ships are little floating towns. Mountains and hills sometimes slip down. Large tracts of land have changed their sites. Such events are common in volcanic countries. To these ravages of nature the scourge of chicanery too often succeeds, and sits down among the ruins to dispute their possession.

Division III. *Things employable* and *things consumable*.—The first may be used without changing their form;—the second cannot be used without being destroyed. To the first head may be referred houses, vessels, &c.;—to the second, eatables and drinkables, &c. The latter are the things *fungible* of the Roman law. Take another step, and we shall find ourselves stopt short for want of a line of demarcation. This wood, which may serve either for building a house, or warming an

* The nine following Chapters might have been placed among the *Principles of the Civil Code*, but as the objects are therein considered in an abstract and scientific manner, I have thought it better to insert them in this part of the work, which is, so to speak, the skeleton of jurisprudence.

† Doctor Fordyce built one which he sent to the Antilles. It was made of pasteboard and paper.

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oven; this ox, which may draw a plough, or which may be driven to the butchers: are these things, or are they not things *fungible?* All nature is one continual round of revolutions: everything which she employs, she consumes; everything which she destroys under one form, she reproduces under another. The distinction between these two conditions, though sufficiently clear in certain objects, is too slight in the general system of things to be of great utility.

Division IV. *Things which are individually valuable* and *things which are valuable in mass.* — To the first head may without difficulty be referred houses, furniture, clothes; to the latter, metal in the rough state, seeds, &c. This distinction is still very uncertain, and does not proceed far before it produces confusion. Useful in some cases, it would be useless in a multitude of others. Many things may be valued indifferently in both manners. The legislator, in tracing these divisions, would require a logician at his side; but surveyors are required for land, the surveying of ideas is an operation not less necessary, and more difficult.

Division V. This is one which the Roman lawyers have not dreamed of, and which is worth all the others. Since they have classed animals among things, they ought to have distinguished things into two classes, — *sensible* and *insensible*. The brazen cow of Myron was, in their eyes, of the same class as the living cow which he employed as his model. But how should they have distinguished the inferior animals from things — they among whom man himself, when he had the misfortune to fall into a state of slavery, was no more than a thing? And who shall say how much the condition of animals and slaves was aggravated by this cold and cruel classification? The law which ought to have protected them, began by giving an idea of them which degraded them. It spoke of them as if it would extinguish in every heart every feeling of tenderness for them — as if it would make us forget that there was any point of community between us. Error for error, — I would rather love the folly which adored the brutes, than the cruelty which ill treated them. Yes, I would rather pardon the hideous caprices which fable paints of Pasiphae, than those frightful bull fights of which the art consists in carrying the suffering and the rage of the expiring animal to the highest point, for the amusement of the barbarous spectators.

Division VI. *Simple things* or *individuals* — *complex things* or *collections of things.* — Among complex things, those should be distinguished which are naturally complex, from those which are so from institution.

A complex thing may either be a collection of simple things equally principals, or a thing which is regarded as *principal*, united to others which are regarded as *accessaries*.

A heap of corn is a collection of things equally principal. A field with certain plants and buildings is a collection of things, where some are principals and some accessaries. The bond which unites them is natural. But an inheritance, of which the objects are scattered — a stock in trade — the respective fortunes of two persons who intermarry, — these are examples of complex things, which are connected only by a bond of institution, such as the identity of the proprietor, and the disposition of the law.

Questions to be decided: — In case of dispute, which is the principal thing? — which are the accessaries? In what cases ought the disposition made with respect to the one, to comprehend the others? This depends upon contracts. It would therefore require a reference to this title.

What shall we say of the famous division among the Romanists, of things *corporeal* and things *incorporeal;* that is to say, of things which do not exist, which are not things? It is a fiction which only serves to hide and to augment the confusion of ideas. All these incorporeal things are only rights either to the services of men, or of real things: this will be shown in treating of rights

If a thing interest sufficiently to become the object of a law, it is only as it possesses a certain value. Now this value is susceptible of many modifications, which require to be marked out. Ought these modifications to be treated of under a general title, or should they be reserved for the particular titles of the offences which affect them — as, for example, for that of waste? This is a question which can scarcely be resolved until all parts of the code have been considered.

Everything which exists, exists in a certain *quantity;* and the quality being given, the value of the thing will be in proportion to that quantity. To express these quantities, *measures* are required. These measures express either the quantity of the matter, or the space which it occupies: they are *weights*, or *measures of extent*. Hence we see that definitions of the measures of every kind, and the regulation of their proportions, ought to form a general title, and is necessary to complete a code of laws.

There is difficulty not only in distinguishing species: there is sometimes much difficulty in distinguishing individuals.

Individuation—(if we may coin this term.) This is one of the first cases which should occupy a legislator under each particular title which demands it. A house is let: but what ought to be comprehended under this term? does it comprehend the tapestry, the locks, the brewing tubs, the cisterns? What is to be understood by a square acre? does it ex-

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tend without limits into the interior of the earth, and above the surface? &c.

The Roman lawyers, who have talked so much about things, have never arrived at clear ideas upon this subject.

Things, says Justinian, are either out of the patrimony of individuals, or belonging to this patrimony. They are either by divine law, or by human law. Things by divine law are also either sacred, or religious, or holy. Things by human law are either belonging to individuals separately, or belonging to all the community indistinctly; that is to say, private or common.* Here there are distinctions in form. But there is a great show, and little accomplished.

It might be imagined that the legislator was about to give specific names to all the things which composed these classes, but we should be deceived. He has carefully avoided this labour; he has abandoned it to the disputes of the lawyers: — "I, the legislator, know not how to explain my will to you; it is your duty, who must obey me, to divine my meaning!"

What would be said to a master who should explain his orders in so confused and vague a manner to his inferiors; who should speak to them of *things* in general, without speaking to them of *things* specific and individual; and whoshould punish them for not having known how to comprehend what he has not known how to express?

The history of Nebuchadnezzar is a noble apologue for legislators: he ordered the wise men to be slain because they did not divine his dreams. How many makers of laws have done the same, without, like him, being turned out among the beasts.

CHAPTER X.

SECOND GENERAL TITLE OF THE CIVIL CODE.

Of Places.

BOTH men and things only exist in a certain place: the circumstance of place will therefore be often necessary in the law for determining both men and things — sometimes for fixing the species, and sometimes the individual. There is no method more exact or more universal for determining an individual, for defining him, than saying that at a certain time he occupied a certain portion of space.

What is the situation, what the extent of the territory which the law comprises within its empire — what are its physical divisions? By what points do the lines pass which separate the land and the sea? The same questions with regard to mountains, lakes, forests, canals. What limits do the atmospheric and subterranean regions oppose to the power of the sovereign and the right of the proprietor?

* Inst. lib. ii. tit. 1.

What are the political divisions and subdivisions? It would be proper to place under this title the map and the catalogue of all these divisions, according to all the sources from which they are derived, if there are differences, as establishments, judicial, military, fiscal, religious, &c.*

As many particular catalogues would be required for marking all the privileged places, as market-towns, fairs, seats of justice, colleges, universities, &c.

In conclusion, it is under this title that the system of divisions which the law adopts for the large geographical measures should be arranged — leagues, miles, &c.

CHAPTER XI.

THIRD GENERAL TITLE OF THE CIVIL CODE.

Of Times.

To the fixation of place, it is necessary to add the fixation of times. In the last resort, it is only by the combined consideration of place and time — of the place in which he is found at a certain time — that one individual can be distinguished from every other.

Under this general title, the law ought to expound what it intends should be understood by the names which express the different portions of time — second, minute, hour, day, month, year, &c.

The *months*, after a certain number of which, reckoned from the death or absence of the presumptive father, a child shall not be deemed to be legitimate, — are they those of the sun or the moon, or the fantastical months of the calendar, which are neither the one nor the other? The particular cases would be found under the particular titles of Bastards, or of Fathers. But it would be requisite that the explanation of the times should be found under a general title, to which reference might be made when necessary.

In cases in which months might cause doubts, it would be better to employ days.

Feasts — Fasts — Lent — inasmuch as these things were the subjects of legislation, would find a place under this title. Thus the calendar was inserted in an act of Parliament, when the new style was adopted in England.

These two titles, designed to establish fixed points to which individuals might be moored in the two oceans of time and space, ought to be found in every code, and will most probably be found in none. Hence the multitude of disputes, of uncertainties, of opportunities for chicane arising from the fluc-

* In France there were old maps according to the divisions into dioceses, provinces, financial districts, military governments. Many others might have been made according to the diversity of jurisdictions and laws, or of customs which varied in each different province.

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tuations of usage among the different systems which different customs have introduced.

Uniformity in the measurement of time, as well as in the measures of weight and quantity, is still the wish of philosophy, but it has not yet been accomplished.

CHAPTER XII.

FOURTH GENERAL TITLE OF THE CIVIL CODE.

Of Services.

FROM things, we pass to man, considered as the subject of property. He may be regarded under two aspects: as capable of receiving the favours of the law—and as capable of being subjected to its obligations.

The idea of services is anterior to that of obligations. Services may be rendered without being obligatory: they existed before the establishment of laws—they were the only bond of society among men, before they had any form of government: parents nourished their children before the laws had made it their duty. There are still many services of benevolence, politeness, and mutual interest, which are rendered freely. The law may extend its domain further, and create new obligations; but there will also be a multitude of cases beyond the reach of the law, which voluntary services alone can supply—and happily, the principle of sociality which preceded the law continues to supply its deficiencies.

1. The first division of services may be referred to that of the faculties which give birth to them. So many faculties, so many classes of services.

We may distinguish in man two sorts of faculties—active and passive. It is in virtue of the former that he can act, or not act—that he can perform a certain act, or abstain from performing it. The passive faculty may be distinguished into two branches—the one purely *physical*, the other *sensible*. As, however, man may be sensible either of good or evil—may experience agreeable or painful sensations—the sensible faculty may be again subdivided into the sensible faculties of *suffering* and *enjoyment*.

From hence arise four classes of services:—

1. Services *agendi*:* positive services of the active faculty. For example,—to succour a man who is drowning—to bear arms for one's country—to arrest a criminal, &c. As many negative offences, so many examples of this class. To create a negative offence, is to impose the obligation of rendering the positive service which corresponds with it.

2. Services *non-agendi*: negative services of the active faculty. For example, not to commit theft, not to commit assassination, &c.: as many positive offences, so many examples of this species of service. To create a positive offence, is to impose the obligation of rendering the negative service which corresponds with it.

3. Services *patiendi physicè*: services of the purely passive faculty. In this respect, the inert human body is not worth much. As an example of this might be mentioned, conjugal condescendence on the part of the wife, and cases might be cited in which dead soldiers have served to fill up ditches that their comrades wished to cross. Dead bodies made use of for the purposes of anatomy, form a more important example. The English law makes this service an addition to the punishment of murderers:† their bodies were delivered to the surgeons to be dissected. This service might be termed, medical experience derived from the bodies of men condemned to death.

4. Services *patiendi sensibiliter*: services of the passive, but sensible faculty, whether for good or evil.

Legal punishments are services imposed upon those who undergo them for the good of society: thus the punishment of a criminal is spoken of as a debt which he has paid.

Legal rewards are services granted to those who receive them for their own advantage;—and for that of society, when there results from them a general satisfaction, and an encouragement to useful actions.

As man possesses a sensibility in common with those whom he loves, he may receive in their persons either good or evil services. The good which is done to him, is a service done to his friends also; the evil which is done to him, is a service done to his enemies. Has he injured any one? to punish him, is to serve the party injured.

II. Another source of division, according to the object to which the service applies—*persons*, or *things*:—

Services respecting the person.
..... reputation.
..... property.
..... condition.

One branch of service *in personam*, is service *in animam*: for example, the service of the Protestant priest, who teaches me to avoid damnation—of the Catholic priest, who would draw me out of purgatory by his masses. Whatever may be their power in the other world, they serve to tranquillize my mind in this. This is a service of which an athiest himself cannot deny the reality. If I am troubled with an imaginary malady which torments me, the physician who should calm its agonies would render me a service.

III. Another source of division, according

* Appellations drawn from the Latin are more convenient, this language being more precise and suitable for forming compound words than the English.

† The law in this respect is now altered by 2 & 3 W. IV. c. 75, § 16.

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to the acting part in the person who renders the service:—

Corporal services: the man who labours in my field.

Mental services: the man who instructs me in the abstract sciences, &c.

It may be said that this distinction was not familiar to our ancestors, who saw only the same person in the barber who shaved them, and the surgeon who delivered them from the stone.

IV. Another source of division: The party employed,—another individual—one's self—a limited class of persons—the whole state. This division corresponds with that of private, self-regarding, semi-public, and public offences: as many classes of offences, so many classes of services.

V. Another division: Services which arise out of established rights. We have said that services must have existed before the establishment of rights: but rights, once established, give rise to new services, consisting in the exercise, in favour of some one, of these same rights. I transfer to a farmer the right to occupy my land for his profit: he pays me what he owes me for the rent of my land. Here are two kinds of services which could only exist subsequent to the birth of rights.

This theory of services is new. The idea of it is familiar to all the world, but it is such a stranger to jurisprudence, that jurists have no nomenclature for it: they have considered it as a consequence of obligation, instead of which, it is anterior to obligation itself. It is true, that for the purpose of acquiring all the force and all the extent which it ought to have, the service must rest upon obligation. It is too feeble a plant to support itself: to produce its fruits, it must be supported. It is like the vine which clings around the elm. But I have thought proper, so much the rather to adopt this title of service into the law, as it has, so to speak, a more natural and apparent affinity with the principle of utility than the others. From whatever side service is regarded, its end is at once seen: it seems to say, *Respice finem*. This word by itself is a continual lesson to the legislator. It is logic wearing the livery of morality;—it is law by its language recalling the idea that every obligation ought to bear the character of a benefit.

TABLE OF THE DIVISION OF SERVICES.

First Division—according to the faculties which give birth to them:—

1. Services *agendi*, consisting in doing.
2. ..... *non-agendi*, consisting in abstaining from doing.
3. ..... *patiendi physicè*, passive and not *sensible*.
4. ..... *patiendi sensibiliter*, passive and sensible.

Second Division—according to the object to which the service applies:—

Services relative to
- the person
  - for the body.
  - for the mind.
- the reputation.
- the property.
- the condition.

Third Division—according to the part which acts in the person who serves:—

Services
- *ex corpore*, rendered by the body.
- *ex mente*, rendered by the mind.

Fourth Division—according to the party served:—

Services
- private.
- self-regarding.
- semi-public.
- public.

Fifth Division—according to the period of their birth:—

Services
- anterior to rights—free and gratuitous service.
- posterior to rights—obligatory service.
- collative in addition to rights; that is to say, consisting in establishing an individual in his rights.

CHAPTER XIII.

FIFTH GENERAL TITLE OF THE CIVIL CODE.

Of Obligations.

IN the textual systems of legislation, and the treatises of jurisprudence, the idea of obligation is too often independent of the idea of service. Jurists in general, have not known what foundation to give to obligation. If you inquire what is its principle, you will find the clouds thicken around you. They will talk to you of the divine will—of the law of nature, of conscience, of *quasi contract*. They will talk of everything except service—the only clear, the only reasonable notion—the only notion which can serve as a limit and a guide in the establishment of obligations.

The most correct definition which can be given of a bad law is this: "A bad law is that which imposes an obligation without rendering any service."

Examine all religious and civil codes by this rule, and you will at once detect all those laws which, according to the principle of utility, ought to be placed in the *index expurgatorius*.

In all bad religions—in those which have done more evil as bugbears, than they have done good as restraints—to what purpose have their sacrifices, their privations, their penances, their restraints served? Has there resulted from them happiness to God or to man?

In a good system of religion, it is always

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on account of the service which results, that obligation is established. There will always be an innumerable multitude of free and gratuitous services; but there ought never to exist any obligation which is not founded upon a service received or to be received.

As many faculties as man possesses, so many species of service may he render — so many species of obligation may therefore be established.*

As to what regards the active faculty, where service is spoken of, say serviceable acts: to render a service, is to exercise a serviceable act. The idea of an obligation, then, supposes such an act: obligation of rendering such a service is the obligation of exercising such a serviceable act. It is therefore clear that the notion of obligations is posterior to the notion of services.

To be subject to a certain obligation, is to be the individual, or one of those whom the law directs to perform a certain act. There is no longer any mystery. The word obligation may be employed in an abstract sense: it may, for the convenience of discourse, be spoken of as a fictitious entity; but it ought to be possible to decipher such language into the language of pure and simple truth — into that of fact. To understand abstract terms, is to know how to translate figurative language into language without figure.

For whom ought an obligation to be profitable? It may either be for the person obliged or for another; but in every case the principle of utility requires that the evil of the obligation, whatever it be, should be compensated by the good of the service.

The evil of an obligation seems carried to its highest point in the case of an individual condemned to an ignominious painful death, in virtue of a penal law. I do not examine here if this terrible obligation be indispensable. But in supposing it so, for example, when directed against atrocious murderers, it is evident that society believes that it purchases by the loss of a dangerous individual, the security of many innocent persons.

CHAPTER XIV.

SIXTH GENERAL TITLE OF THE CIVIL CODE.

Of Rights.

IT is by imposing obligations, or by abstaining from imposing them, that rights are established or granted. Obligations may be imposed from which no rights shall result; — for example, ascetic obligations which are useful neither to the party bound, nor to others; — but it is not possible to create rights which are not founded upon obligations. How can a *right* of property in land be conferred on me? It is by imposing upon everybody else the obligation of not touching its productions, &c. &c. How can I possess the *right* of going into all the streets of a city? It is because there exists no obligation which hinders me, and because everybody is bound by an obligation not to hinder me. When we have examined all rights separately, some will be found to owe their existence to the existence of obligations — the others to the non-existence of the same obligations. All rights rest therefore upon the idea of obligation as their necessary foundation.

In order to speak clearly of rights, it is necessary, in the first place, to distinguish them according to their kinds. The following are the principal divisions: — First division, drawn from the diversity of their *source*. — 1. Rights existing from the absence of obligation; 2. Rights established by obligation. This is a fundamental distinction. Rights resulting from obligations imposed by the laws, have for their base *coercive* laws: rights resulting from the absence of obligation, have for their base *permissive* laws.

Second division, drawn from the diversity of their *objects*. Rights may be established — 1. For the maintenance of property; 2. For general safety; 3. For personal liberty; 4. For general tranquillity (the union of safety with security.) So many distinct ends, so many classes of rights.

Third division, drawn from the *subjects* upon which they are exercised: — 1. Rights over things; 2. Rights over persons — over the services of persons.

Rights over persons may either refer solely to the person, or to things and persons.

Under this last head would be found the *right of interdiction* with respect to things — the right of interdicting to one or all, the occupation of anything, or a certain use of it. This is a right to a negative service — it constitutes exclusive property.

Right solely referring to the person has two branches: — 1. Immediate right over the person, *in corpus*; as conjugal right — the right of parental correction — the right of an officer of justice to seize an individual, to execute a legal sentence, &c.; 2. Immediate right over the person, *in animam*, consisting of the means of influencing the will; as the right of locating in an advantageous place — the right of dislocation — right of rewarding — right of making a will — right of directing public or private instruction, &c. &c.†

* Hence the table of *obligations* is the counterpart of the table of services: we may distinguish the obligation *agendi* — obligation *non-agendi* — obligation *patiendi* — obligation *benè patiendi* — obligation *malè patiendi*.

The idea of obligations referring to the passive faculty, though much less familiar, has been employed by the Romanists — example, *obligationes ex delicto*.

† Those two branches of rights are very distinct, but they have no proper names, and I have not found any suitable word in ordinary language for designating them. I would call right *in*

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Fourth division, drawn from the *extent* of the right, that is to say, of the number of persons who are subject to it: — 1. *Private* rights; 2. *Political* rights.

Fifth division, drawn from the persons in favour of whom the right is established: — 1. *Personal* rights—those which are exercised for the benefit of him who possesses them; 2. *Fiduciary* rights — those which are possessed to be exercised for the advantage of another only, such as those of factor, attorney, guardian, father, or husband in quality of guardian. All political power is fiduciary; fiduciary rights are the same in nature as personal rights, combined with certain obligations.

Sixth division, drawn from the *divisibility* of rights: — 1. *Integral* rights; 2. *Fractional* rights; 3. *Concatenated* rights.

What I call *integral* right is the most unlimited — the entire right of property: it includes four particulars —

1. Right of occupation.
2. Right of excluding others.
3. Right of disposition; or the right of transferring the integral right to other persons.
4. Right of transmission, in virtue of which the integral right is often transmitted after the death of the proprietor, without any disposition on his part to those in whose possession he would have wished to place it.

There is not one of these rights which, in a system founded upon the principle of utility, ought not to have its limits.

The first would be limited by the obligation of using without injury to another.

The second, by the obligation of permitting its use, upon urgent occasion, for the benefit of another.

All these rights may also receive different restrictions, for special reasons of utility. Hence, the proprietor of a distillery may be subject to regulations which shall have for their object the collection of the revenue, &c.

These exceptions deducted, what remains is the quantity of integral right.*

Rights of less extent than the *integral* right may be considered as fractions, and called fractional.

When the whole right is possessed, one is said to have *the property of the thing*. Is less than this possessed, one is said to have *a right*, — a *right* to be exercised over the material thing; for example, a right of chase, a right of way, a right to services.

Concatenated rights are those which are not founded on absolute, but on conditional laws. The law which prohibits, permits, or commands, may add conditions, in such manner that the accomplishment of the one shall be necessary to the accomplishment of the other.

The legislature by itself does all that is possible for the establishment of the right, with the exception only of the act by which the individual puts his seal to it. At that period the obligation arises.

Conditional laws are in an intermediate condition between existence and non-existence; they wait for the operation of some individual to give them the breath of life.

Fractional and concatenated rights may, in certain cases, be called *common* rights.

Let us now return to the second division, —Rights concerning things. The only right which purely relates to things is that of occupation.

In order to know the kinds, the modifications of this right, it is necessary to know the modifications of which it is susceptible. So many limitations as may exist, so many distinct rights may there exist, each of which may have a separate proprietor.

Under a legislation but little advanced, the right of occupation could not exist in an unlimited form: no person could possess in this manner — scarcely anything could be thus possessed.

The right of occupation may be limited in seven respects: —

1. With regard to the *substance* of the thing. Thus, from the general right of occupation which I possess over the land which is considered mine, there may be detached in your favour the right of carrying an aqueduct above it, or a sewer underneath it — the right of making a roof project over it, the right to allow a tree to project, the right of exploring mines, &c.

The right of occupation with respect to a house, may either comprehend the whole house, or be limited to a certain chamber; and so of the rest.

It will be seen that this measure of limitation supposes that each thing may be distinguished from every other, and that each part

corpus, right of physical contrectation; and the right *in animam*, right of *moral contrectation*. Instead of moral contrectation, I would rather say *pathological*, if this term were familiar.

These denominations have two inconveniences: 1. They are new, and new words frighten the readers; 2. They are formed of words which have no previous analogy with the language. — *Contrectare* signifies to *handle*, to *touch*. The word is used figuratively, and Cicero says, *Mente contrectare varias voluptates*. Necessity only can justify innovation in nomenclature.

Pathological is a medical term; but in legislation there is also necessity for expressing that which concerns the affections, the feelings, the internal impressions. In ordinary use, *physical* and *moral* are contrasted; but moral is employed with very different meanings, so that it is often obscure and equivocal.

* Integral, though the most compound of all, is yet the most easily conceived and the shortest to express. For this reason, in making an exposition of rights, it is proper to commence with this.

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of a thing may be distinguished from every other part: it supposes a complete system of individuation for things.

2. The right of occupation may be limited *as to the use;* that is to say, as to the manner of occupying. I may gather the fruits of my land, but I may not surround it with a hedge, still less, close all entrance against you. I may perform divine service in the church of which I am the clergyman, but I may not keep shop there.

The right of collecting a product which renews itself, such as water, fish, wood, turf, — does this respect the substance or the use? Again, another species of individuation; — again, other lines of positive demarcation.

3. The right of occupation may be limited as to *time.* If it be not perpetual, it may be present or future; in the last case, it may be certain or contingent. Present or future, its end may be dated from a determinate or indeterminate period. We may remark here, that when we suppose rights to be certain which are not present, it is only in conformity with custom; for in strictness there is no certainty with respect to anything which is future. In order to possess a certain right, it is necessary that one shall be certain to be alive. With this restriction, a right which ought to commence after the lapse of ten years, for example, is a certain right. A right which ought to vest in me after your decease, — is this certain or contingent? It is certain that you will die, but it is not certain when you will die, nor even that you will die before me. Here there are still required lines of demarcation.

4. The right of occupation may be limited by *place.* Such a swarm of bees is yours whilst it remains upon your ground. It is mine when it has quitted your land for *mine,* or it belongs to nobody. Under the ordinary law, men are, in relation to different sovereigns, what bees are to different proprietors.

It will be perceived that this distinction only respects moveable things: also that this species of limitation brings us back to that which has reference to time; since to have a right to a certain thing whilst it continues in a certain place, is to have such right during a certain time. The place serves as an index to the time.

5. The right of occupation may be also limited by a right of *interdiction* possessed by another; that is to say, when another has the right of interdicting your occupation of the thing. It might seem at first that these two rights would destroy one another; but if the right of interdiction only exist at intervals—if it only exist in connexion with certain customs, the one and the other right may exist, and the one serve to limit the other. It is thus that the poor have the right of gleaning in the fields of the rich, provided that they have not been interdicted.

It may happen that this right of occupation is of no value. It may be, that it may be annihilated by the right of interdiction which limits it. Has, therefore, the right of gleaning any force? When I have collected corn worth many shillings, if you have not previously forbidden me, you could not have me condemned to make even simple restitution. But had I clandestinely taken only a single farthing of your money from your room, you could have had me punished for theft.

6. The right of occupation may be limited by the addition of other persons whose concurrence is necessary for the lawful exercise of the right. Three co-heirs have between them a strong box. No one of them has the right to open it, except in the presence and with the consent of the other two. The right of each is limited by that of his two associates. A right, the exercise of which, in order to be lawful, requires the concurrence of many wills, may be called fractional.

This kind of limitation may also be connected with the right of interdiction. One of the co-heirs refuses his consent to the opening of the strong box; he forbids this act to the others.

7. The right of occupation may further be limited by *another right of occupation* granted to another proprietor. I have a right to dwell in a certain room: if you have also a right to dwell in the same room, it is evident that I cannot use my right exactly in the same manner as if you had no such right.

It will be seen that this kind of limitation may also be connected with the first and second.

When many persons find themselves possessed of these rights of occupation, limited the one by the others, they are commonly called *co-proprietors;* and it may be said of the thing, that is possessed by these persons *in common.*

The right of alienation has also its limitations — its modifications. They correspond with those of the right of occupation. He who is acquainted with these, will not be ignorant of the others.

I must observe that the right of alienation includes a particular kind of right respecting services; for what do I do when I alienate anything in your favour? Among other acts, it is necessary that I dispose of certain services on the part of the officers of the government whose assistance would be necessary to guarantee to you the occupation of this thing. The rights which you acquire over such services, form part of the numerous band of rights which are transferred upon every alienation of property: — with respect to the principal right, they may be called *corroborative rights.*

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The acts to which it extends, form the measure of a right;—it is to these acts that the view must be directed, in order to obtain those clear ideas which can only be obtained by the contemplation of material objects. The measure of a right of occupation which I possess, is the physical acts which I may exercise towards the thing to be occupied. The measure of the right of exclusion which I have, is the acts that you cannot exercise upon the same thing. The measure of the right of disposition, is the acts which have reference to the two kinds of rights of which I can dispose. But when we have arrived at the idea of a physical act, we have under our eyes a definite image: we have reached the source, we have reached the highest degree of clearness. He who at the name of a right can picture to himself a sensible image, understands the nature of this right; he who is not able thus to represent it, does not yet understand it.

Every right *agendi* has, then, an act to which it has reference This act may either be *transitipe* or *intransitive:* intransitive, if the act only affect the agent himself,—transitive when the act affects a thing or person other than the agent.

Even when the act appears only to affect things, it affects persons—that is to say, the persons to whom the things might be useful—inasmuch as there is nothing to be considered in things, but the services which persons may draw from them.

Hence, when the right appears nominally to be conferred on a thing, it is really conferred on a person, inasmuch as it is always a person who enjoys the advantage resulting from such right.

This is what the compilers of the Roman code never comprehended. According to them, all rights are divided into two masses,—of which the one regards *persons*, the other *things*. They have set out with a false unintelligible division into two parts, which are not exclusive with regard to each other. *Jura personarum*—*Jura rerum*.

It may be said that they were led to take this division by a species of correspondence or grammatical symmetry; for there is no correspondence between the two appellations except as to the form,—there is none as to the sense. *Rights of persons*—what does it mean? Rights belonging to persons—rights conferred by the law on persons—rights which persons may enjoy:—everything is clear. Transfer this explanation to *rights of things*, what is the result? Things which have rights belonging to them—things on which the law has conferred rights—things which the law has wished to favour—things for whose happiness the law has provided:—it is the height of absurdity.

Instead of *rights of things*, it is proper to say *rights over things*. The change appears very slight: it, however, overthrows this nomenclature, this division of rights, all this pretended arrangement of the Romanists—since adopted by Blackstone, and according to which he has so badly classed the objects of the law.

If we err in the first step, the further we proceed in the same direction, the further we shall be from the end. How shall he who employs for the explanation of everything an expression which has no meaning,—how shall he communicate a knowledge of all the parts?

This unfortunate double signification has thrown the Romanists into a perpetual confusion. Under the heads of rights of persons, there are nearly as many questions concerning rights over things, as concerning rights over persons. For example, right of the husband over the goods of the wife acquired by his marriage;—right of the father over the property acquired by his son;—right of the members of a political society over the things belonging to that society; and so of the rest.

What a system is that, in which the fundamental terms change their signification every moment!

For expressing in an expeditious manner these rights over things, would it be possible to employ the word so frequently used by the Romanists—servitude? I fear it would be put out of employ by the abusive use they have made of it. It has taken a false acceptance; it is difficult to regenerate it.

If it could be employed, this is the use I would make of it. The partial right of occupation, whether as to the substance of a thing, or as to its use, I would call *positive servitude*. The right of exclusion with respect to such or such a part of the substance, or such or such a use on the part of the original proprietor, I would call *negative servitude*. The right over the positive services of the principal proprietor, to be exercised on his part for the improvement of the thing for the profit of the other subordinate proprietors, I should call *compulsory servitude*.

Other errors of the Romanists upon this matter:—If they are to be believed, there are cases in which rights only subsist by means of the laws, and other cases in which they have subsisted, or still subsist, independent of the laws. Those rights which they represent to us as only subsisting by the law of nature, or the law of nations, or some such other phrase, have no existence at all, or only exist in consequence of civil laws, and by them alone exactly as those whose existence they attribute to these same laws.

They have ill understood legal organization; they have fallen into strange mistakes respecting the manner in which the functions of this vast body are performed. These errors have been anything but matters of indif-

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ference. I should never have done, if I were to cite all the false reasonings resting upon these false ideas. Certain rights, it has been said, are not founded upon the civil law; they therefore ought not to be altered by the civil law. Certain laws have only been made at the expense of natural liberty; therefore they are violations of natural liberty; they are therefore unjust.

To say that a law is contrary to natural liberty, is simply to say that it is a law; for every law is established at the expense of liberty — the liberty of Peter at the expense of the liberty of Paul.

When a law is reproached as hurtful to liberty, the inconvenience is not a particular ground of complaint against that law — it is shared by all laws.* The evil which it causes in this manner — is it greater than the good which it does in other ways? This is the only question to be examined.

It is unfortunate that individual and political liberty have received the same name. By means of this double signification, a syllogism may be formed in favour of perpetual revolt. An established law is a restraint upon liberty: a restraint upon liberty is tyranny: tyranny is a legitimate reason for revolt.

This digression is not foreign to the present subject: it shows the importance of just ideas of the origin and nature of *rights*.

The preparation of a table of rights is a sufficiently dry and ungrateful task; but such labours are required of those who would be of use to the science. It is necessary to distinguish one part of a subject from another, in order to be in a condition to establish true propositions respecting them. Nothing can be asserted, nothing can be denied, respecting them, whilst objects are mixed *pell mell*, and form only heterogenous masses. In order to make it understood that one plant is food, and another poison, the characters which distinguish them must be pointed out, and proper names must be assigned to them. So long as there are no names for expressing many rights, or that there is only one and the same name for expressing many dissimilar ones: so long as generic names are employed, without distinguishing the species included under them, it is impossible to avoid confusion — it is impossible to form general propositions which will be true. This observation has already been made, but it often presents itself in a science in which the greatest difficulties arise from a vicious nomenclature.

* The noblest minds have fallen into this error. Adam Smith, in speaking of two laws which he had good reason for disapproving, says — "These two laws were evidently violations of natural liberty, and consequently bad."—*Wealth of Nations*, book iv. ch. 1. This *consequently* would annihilate all laws.

TABLE OF THE DIVISIONS OF RIGHTS.

I. *Sources*.—Rights existing from the absence of obligation; rights established by obligations.

II. *Ends*.—Connexion of the right with the interest of the party.
1. Property.
2. General safety.
3. Personal liberty; branch of general safety.
4. Tranquillity; union of safety with security.

III. *Subject* over which they are exercised.
1. Rights over things.
2. Rights over persons.

IV. *Extent*, with respect to the number of persons subject to them.
1. *Private* rights.
2. *Political* rights.

V. *Person* whose interest has been the reason for granting them.
1. *Personal* rights.
2. *Fiduciary* rights.

VI. *Divisibility* among persons.
1. *Integral* rights.
2. *Fractional* rights.

VII. *Transmissibility*.
1. Transmissible rights.
2. Intransmissible rights.

PRINCIPAL HEADS.

1. Rights of property.
2. ..... general safety.
3. ..... general tranquillity.
4. ..... personal liberty, that is, individual.
5. Integral rights.
6. Fractional rights.
7. Concatenated rights.
8. Personal rights.
9. Fiduciary rights.
10. Private rights.
11. Political rights.
12. Principal rights.
13. Corroborative; or accessory, or subsidiary, or sanctionative rights.
14. Transmissible rights.
15. Intransmissible rights.

RIGHTS OVER THINGS.

1. Right of occupation of the thing.
2. Right by exclusion of another, or by interdiction of occupation by another.
3. Right of interdicting occupation.
4. Right of alienation.
5. Right of occasional disposition.

RIGHTS OVER PERSONS.

1. Right of immediate physical contrectation.
2. Right of immediate moral or pathological contrectation.
3 Right of physical contrectation through the intervention of another.

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4. Right of moral or pathological contrectation through the intervention of ano ther.

5. Right of individually commandin g pesons.

6. Right of collectively commanding persons.

N.B.—The table of political powers, or the rights exercised by government, is not given here.

CHAPTER XV.

SEVENTH GENERAL TITLE OF THE CIVIL CODE.

Of Collative and Ablative Events.

ALL the rights which I possess have had a commencement — all will have an end. To give to a certain event the quality of *epoch* from which to date the commencement of a right, is to render that event *collative* with respect to that right: to give to a certain event the quality of *epoch* from which to date the cessation of a right, is to render this event *ablative* with respect to this right.*

Has the sovereign established a code of laws? He has, then, given to certain events the quality of *collative* events, and to others the quality of *ablative* events. These are two important catalogues. Do you at the present moment possess a certain right? It is because with reference to this right there has happened in your favour an event which belongs to the first catalogue, and none has happened which belongs to the second. How many assertions are comprised in that assertion apparently so simple —" *You possess a certain right!*"

To establish what events shall belong to these catalogues, is to establish the laws.

To have formed complete catalogues of them is to have completed the code of laws. To distinguish all these events — to give them their specific denominations, is a labour of the first necessity, and yet it is altogether a new task.

I shall here confine myself to a sketch of an analytical table of the principal events, in order to show what they resemble, and from what they are distinguished. These events are very nearly the same as the usual catalogue of *titles;* for common wants have given a certain uniformity, a certain correspondence to the laws of all people, at least in their essential features.

1. A right begins to belong to me — this right previously belonged to some other person, or it belonged to no person. Have I found a desert island? have I gathered fruits, cut down wood, collected minerals, caught animals upon this land? If the laws of my country permit it, I shall have become a proprietor without any person having ceased to be so.

Original discovery,— first collative event with regard to things newly subjected to the dominion of man. In this manner everything was originally acquired, but in our days such acquisitions are more rare: in proportion as the world is peopled, fortunes of this kind, as well as of every other, are obtained with greater difficulty.

2. The seeds which I have gathered and sown, have produced others: the birds, the animals that I have taken, have multiplied. Here is new wealth. Second collative event, — *possession of productive things.*

3. Uprooted trees, large fishes driven out of their course, have been thrown upon my island. Third collative event, — *possession of a receiving thing, or thing serving as a receptacle.*

4. Have I employed my labour upon my own things? — have I cut the wood or the stone? — have I polished the metal or spun the flax? — have I improved the inert matter by my industry? these are new sources of enjoyment. Fourth collative event, — *amelioration of one's own things.*

Let us go on to things which are already under the hands of a master. Before a new possessor can be invested with them, it is necessary that an ablative event in relation to the ancient possessor should take place. This event may be either physical or moral: physical, if it happen without human intervention, moral, if it take place through the will of an individual, or the legislature. First physical ablative event, *death of the proprietor;* second, *fortuitous obliteration of the distinctive character of the thing,* as in the cases spoken of by the Romanists under the heads *confusion, commixtion,* &c.† In these two cases the loss is of necessity: the individual can no longer possess the thing, or the thing can no longer be possessed by him, without his possessing at the same time other things to which he has no right.

4 and 5. These two ablative events may be both expressed by a collative event. Instead of speaking of the death of the proprietor, we may say, succession in consequence of death; instead of saying, *fortuitous obliteration of the distinctive character of the thing,* we may say, as above, *possession of the receiving thing.*

Does the intervention of man enter into the ablative act, — it is then the law alone which operates to give this effect to the event, or it is some individual who acts in concert with it; this individual can only be

* What is here called a *collative event* has been commonly called *title* or *means of acquisition.* To be the individual in whose favour a collative event has happened, is to have a *title.* I shall shortly show the reason of this change of denomination.

† For example, if in building a house one should honestly have employed the materials of another. If, in melting some of my metal, some of your metal should be mixed with it, &c.

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the original proprietor, or the new proprietor, or a third party acting for them.

6. Sixth collative event, — *private disposition.*

7. Seventh, — *disposition* on the part of the magistrate, or *adjudication.*

8. Other collative events, — *occupation* by way of seizure made at the charge of a delinquent, or judicial seizure — occupation by way of capture by a foreign enemy, or *hostile seizure* (booty in war.)

In governments as civilized as are those of Europe, the quality of collative events has not been accorded to these two acts without the concurrence of *adjudication.*

9. *Occupation of a thing abandoned.* — To abandon anything is one method of disposing of it. It is to divest one's self of it, without investing any particular person with it. This amounts to giving it to the first comer.

10. Is the disposition so regulated as only to take effect when the disposer is dead, and upon condition that he has not made any contrary disposition? There is here, on the one part, *donation by testament;* — on the other, *testamentary succession.*

11. Has the disposition had for its object the fictitious thing called *charge, office, right of office?* it is called *nomination* or *election.* The last word is most commonly used when the right of disposition is found divided between many proprietors. The collation by which I assume an office of my own accord for my own profit, may be called *assumption* of office; the act by which I am divested by another, *dismission;* the act by which I divest myself, *demission.*

12. Has the disposition for its object, a right over services to be rendered by the dispositor himself? it is what is sometimes understood by the words convention, treaty, contract, &c. I wish that we could exclusively employ to this effect some new appellation, such as obligatory promise.*

Adjudication, an act of the magistrate, naturally leads to the search for some other event which has served as a motive for this act. To what purpose does the law intend that the judge shall exercise his rights? It is not for his own advantage: it is only to accomplish other legal dispositions — to give effect to other events, collative and ablative.

To make a disposition, is to apply to such an effect the power of the laws, — is to command the services of the sovereign, or the magistrates. Is the disposition a lawful one? it possesses the qualities of those to which the sovereign is ready to lend his assistance. Is it unlawful? it is of the number of those to which he refuses it.

Thus explained, a disposition may be considered under two aspects, either as serving to modify a general law, or as making by itself, under the authority of the sovereign, a particular law. In the first point of view, the sovereign is represented as making a general law, and leaving certain words blank, that they may be supplied by the individual to whom he grants the right so to do. In the second point of view, the individual makes the law, and causes it to be sanctioned by the public force. The prince becomes literally the servant of the humblest of his subjects. To make a contract, is not to implore the services of the magistrate; it is to command these same services.

For marking the commencement of a right, I have hitherto only assigned a single event; but many may concur in it. It is therefore necessary to distinguish dispositive events into simple and complex. Among the elements of a complex event we may distinguish some by the title of principals, the others by that of accessaries. With regard to a testamentary succession, for example: To give it effect, at least two different events must happen: 1. The death of the first proprietor; 2. The birth of the new proprietor: add to these the steps that the heir must take in order to furnish proofs of his character as such, and those which are necessary on the part of the magistrate, to put him into possession; you may, in this complex event, give to the two first the name of principal events, and to the acts required from the heir and the magistrate, that of accessory events.

If any of those acts, to which the quality of collative or accessory events has been given, are omitted, there are so many grounds of nullity. To grant to an act a certain collative quality, is to prescribe a formality to be attended to, under the penalty of making void the disposition to which it refers, if it be omitted.

Analyze the kind of disposition, called *election*, with regard to a place either in the House of Commons in England, or in the Council of State at Venice, where aristocratic jealousy has exhausted all the art of combination. How many accessory collative events! — how many grounds of nullity to be avoided! — how many formalities to be regarded! — what a series of steps to be passed over before arriving at the last term, the establishment of the right!

13. Adjudication, as we have seen, is a collative event which supposes others, without which this would not take place. It is the same with regard to possession, an event which serves to prove the anterior existence of these other collative events, and to render them useless.

* The word contract, invented and used by the Roman law, is applicable indifferently to many dispositions which are not promises, such as purchases, sales, loans, &c. Besides, instead of a single disposition, it always indicates many at one time, — dispositions on both sides. Promise is the most explicit word, that which best excludes every false idea.

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Possession may be actual or ancient. That possession may be called simply actual, when the party has only provisional security, so long as no collative event is found which operates in favour of his adversary, or, what amounts to the same thing, so long as no ablative event is found which operates to his prejudice.

That may be called ancient possession, which, in consideration of its duration, it is determined shall have not only the effect of provisional investment, but also the effect of destroying every collative event which might operate to the prejudice of the party, and in favour of his adversary; such is the case which has been characterized by the word *prescription*.

But what is it to possess? This appears a very simple question:—there is none more difficult of resolution, and it is in vain that its solution is sought for in books of law: the difficulty has not even been perceived. It is not, however, a vain speculation of metaphysics. Everything which is most precious to a man may depend upon this question;—his property, his liberty, his honour, and even his life. Indeed, in defence of my possession, I may lawfully strike, wound, and even kill, if necessary. But was the thing in my possession? If the law trace no line of demarcation, if it decide not what is possession, and what is not, I may, whilst acting with the best intentions, find myself guilty of the greatest crime, and what I thought was legitimate defence, may in the opinion of the judge be robbery and murder.

This, then, is a matter which ought to be investigated in every code, but it has not been done in any.

To prevent perpetual equivocation, it is necessary carefully to distinguish between *physical* and *legal* possession. We here refer to the former: it does not suppose any law, it existed before there were laws; it is the possession of the subject itself, whether a thing or the service of man. Legal possession is altogether the work of the law; it is the possession of the right over a thing, or over the services of man. To have physical possession of a thing, is to have a certain relation with that thing, of which, if it please the legislator, the existence may hold the place of an investive event, for the purpose of giving commencement to certain rights over that thing. To have legal possession of a thing, is already to have certain rights over that thing, whether by reason of physical possession, or otherwise.

I have said, that to have physical possession of a thing, is to have a certain relation with that thing. This was all that I have said—this is all that I could say at first. What is that relation? It is here that the difficulty begins.

To define possession, is to recall the image which presents itself to the mind when it is necessary to decide between two parties, which is in possession of a thing, and which is not. But if this image be different with different men—if many do not form any such image, or if they form a different one on different occasions, how shall a definition be found to fix an image so uncertain and variable.

The idea of possession will be different, according to the nature of the subject—according as it respects things, or the services of man, or fictitious entities—as parentage, privilege, exemption from services, &c.

The idea will be different, according as it refers to things moveable, or immoveable. How many questions are necessary for determining what constitutes a building a lodging! Must it be factitious? But a natural cavern may serve for a dwelling,—must it be immoveable? But a coach, in which one dwells in journeying, a ship, are not immoveables. But this land, this building,—what is to be done that it may be possessed? Is it actual occupation?—is it the habit of possessing it?—is it facility of possessing without opposition, and in spite of opposition itself?

Other difficulties: In reference to exclusive possession, or possession in common—in reference to possession by an individual, or by everybody.

Ulterior difficulties: In reference to possession by one's self, or possession by another. You are in the habit of occupying this manufactory, you alone occupy it at this hour. I say you are only my manager—you pretend to be my lessee. A creditor contends that you are my partner. This being the case, are you, or I, or are both, in possession of the manufactory?

A street porter enters an inn, puts down his bundle upon the table, and goes out. One person puts his hand upon the bundle to examine it; another puts his to carry it away, saying it is mine. The innkeeper runs to claim it, in opposition to them both; the porter returns or does not return. Of these four men, which is in possession of the bundle?

In the house in which I dwell with my family is an escritoire, usually occupied by my clerk and by what belongs to him. In this escritoire there is placed a locked box belonging to my son; in this box he has deposited a purse entrusted to him by a friend. In whose possession is the bag—in mine, in my clerk's, in my son's, or his friend's? It is possible to double or triple the number of these degrees; the question may be complicated at pleasure.

How shall these difficulties be resolved? Consult first primitive utility, and if it be found neuter, indifferent, then follow the popular ideas; collect them when they have decided—fix them when they are wavering—supply them when they are wanting; but by one method or another resolve these sub-

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tilties; or, what is better, prevent the necessity of recurring to them. Instead of the thorny question of possession, substitute that of honest intention, which is more simple. In the last case which I have supposed, the Roman lawyers would have recognised only one of the four as being in possession, yet all may be honest; and the possessor may have been dishonest as well as any one of the others. In this last case, make the decision depend upon possession, — you would have a culpable person unpunished, and three persons punished unjustly; — make it depend upon honest intention, — there will neither be impunity nor unjust punishment.

Observations upon Nomenclature.

What I call a *dispositive event* is what is called, in the writings of jurisprudence, *title.* I have been fully sensible that the terms *collative* and *ablative events* have the double inconvenience of length and novelty; and I have tried to make use of the word *title.* I have found it equivocal, obscure, defective — spreading a mist over the whole field of jurisprudence; whilst the two other terms are clear, sufficient, and yielding instruction in themselves.

In order to exhibit every point in which the word *title* is defective, it would be necessary to examine a great number of phrases in which it very imperfectly expresses the idea which the term *collative or ablative* expresses clearly. To say to a man, *you have a title,* is to assert with sufficient clearness that a *collative* event has happened in his favour; but if I say to him, *you have no longer a title,* this method of speaking is very little satisfactory: it does not express why, or how, this title no longer exists; it is necessary to understand that after a *collative* event had occurred, it has been succeeded by another of an opposite nature.

The word *title* is especially defective when *obligations* are spoken of. Using this word, how shall it be made to appear that a collative event has happened which has subjected you to a certain obligation, or that a certain ablative event has happened which has freed you from it? The result is, that in these four cases in which it would be necessary to use the word title, it would only express the meaning in one. In the three other cases it is improper or inapplicable. It is only necessary to try it in order to discover its insufficiency.

By employing the proper word *event,* it is possible to form a regular class of appellations.

In reference to the individual on whom it confers a right, an event may be called collative: in reference to him upon whom it imposes an obligation, it may be called *onerative.*

An ablative event, with respect to him from whom it takes away a right, may be called *destitutive;* with reference to him from whom it takes away an obligation, it may be called *exonerative.*

Is it wished to give to the two epithets ablative and collative a generic name, they may be called dispositive.

There is here a series of names which have a reference to each other; here is a generic name, and subordinate specific names. Take the word title, the logical ramification is stopped at the first step: there are no species of titles; it is an absolutely barren trunk.

The radical objection against the word *title* is, that it is obscure — it does not exhibit things as they are. To say that an event has happened, is to speak the language of simple truth — is to announce a fact which presents an image to the mind — it is to present a picture which could be painted. To say you have a *title,* is to speak the language of fiction: it is to utter sounds which do not present any image, unless they are translated into other words, as we shall shortly see. To *possess,* to *have,* in a physical sense, — here there is a real fact announced in a real manner; for it is to occupy the thing, or to be able to occupy it (*posse, potes,* to have power over it.) To *possess* a thing in the legal sense, *to possess rights* over a thing — there is an equally real fact, but announced in a fictitious manner. *To have a title, to possess a title,* in relation to these rights, — there is still a real fact, but announced in a manner still more fictitious — still more removed from presenting a real image.

I would not, therefore, employ the word *title* as a fundamental term, but once translated from the language of fiction into the language of reality, I hesitate not to employ it. It is not luminous in itself, but when it has received light, if it be properly placed, it may serve either to reflect or to transmit it.

In making a catalogue of dispositive events, care should be taken of three things: — 1. To give every one of them names formed upon the same plan; 2. To give them only such names as are *species* formed from the genus designated by the word *event;* 3. Not to place, without notice, specific names in the same rank with the generic names of which they express the species.

The names of titles ought only to be names of events. Such are *occupatio, accessio, traditio.* But *prescription* is not so any more than the species into which it has pleased the lawyers to divide prescription. The same disorder may be seen amongst *contracts.* A contract is an assemblage of acts; the making of a contract is therefore an event: thus certain contracts have the names of acts — *stipulatio, fide-jussio.* But the names to the four real contracts are not the names of events; *mutuum, commodatum, depositum, pignus* (they have quitted the act to fix upon the thing

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which has been its subject.) It would have been as easy to have said *mutuatio, commodatio, depositio, pignoratio:* but the Romanists have not even suspected the characters of a good nomenclature. For the designation of the contracts which they call *consensual* (as if the others were not so,) five of the terms employed are the names of acts — *emptio, venditio, locatio, conductio, emphyteusis;* two are not—*societas, mandatum,*—they ought rather to have said *societatis initio, mandatio.*

With a nomenclature which at every step confounds things which it is most necessary to distinguish, how is it possible to be understood? With the Roman nomenclature, the noblest minds have not been able to escape from chaos.

Naturalists have never so far misunderstood the rules of logic. Linnæus has reformed the system of botany, but he did not find it in such a state of confusion as is jurisprudence. Before him, no botanist had been so unskilful as to arrange in the same line germination and the tulip — ramification and corn, &c.

I have no wish to enter into infinite details to show what has been among lawyers, both the classification of titles and the principles upon which they have been founded. The Romanists, Coccejius, Blackstone, only present us with the image of chaos. Those who do not know how much nonsense is found in the books of lawyers, must often imagine that I insist too much upon these clear and common things. I can fancy my readers saying to themselves, "But all this has been repeated a thousand times."—Oh my readers, who thus reproach me, you know but little of the profound works of jurisprudence, which you esteem from their bulk as the depositories of the science of ages! When I analyze the most simple ideas, that which appears trivial to men of sense, is a paradox to the lawyers. Truth, utility, novelty, — hitherto these three objects travel together.

Table of Collative Events.

1. Original discovery, or right of the first occupant to whom one can refer. } Liberty of fishing in great waters. Liberty of hunting in unappropriated lands
2. Possession of productive thing.
3. Possession of receiving thing.
4. Possession of neighbouring lands.
5. Amelioration of the thing by one's own labour.
6. Possession of receiving thing, by reason of the obliteration of the distinctive characters of the accessory thing.
7. Succession on account of death.
8. Occupation.—1. By judicial seizure; 2. By hostile seizure; 3. By seizure of things abandoned or lost.
9. Private disposition, which comprehends — 1. Alienation or abdication; 2. Assumption or acceptation.
10. Adjudication by means of justice.
11. Formalities, collative accessory events.
12. Actual possession: provisional ablative event.
13. Ancient possession: definitive collative event.
14. Nomination to office, which comprehends —1. Assumption of office; 2. Election.*

CHAPTER XVI.

EIGHTH GENERAL TITLE OF THE CIVIL CODE.

Of Contracts.

Section 1.

CONTRACTS are acts of collation or investment—conventions — laws more or less ephemeral, proposed by individuals, and adopted by the sovereign, provided they are valid. To what ought he to grant the seal of his authority? I answer, to all. For no private contracts would be made, except with a view to reciprocal advantage, and they cannot be restrained, without in the same proportion injuring the happiness of individuals. Entire liberty for contracts, — such would be the general rule. If there be any to which this sanction should be refused, it will always be for some particular reason. The reasons for declaring certain contracts invalid or unlawful, ought to be drawn from the nature of the contracts themselves, inasmuch as they are contrary to the public interest; — or to the interest of a third party, or to that of the contracting parties.

The exceptions should be indicated under a separate head. It would be proper that a catalogue of the contracts to which the law either absolutely or conditionally refuses its sanction, should be found in the code itself.

The law ought to act with openness: when it grants its sanction to a contract, it ought not to withdraw it secretly on account of conditions not avowed as such.

To enhance the cost of procedure, is to violate the promise it has made to sanction contracts. It is to render justice inaccessible to the poor, that is, to those who have most need of it. This is a truth none can deny, but which few have had the courage to avow.

I have employed the word contract or transaction, to express indistinctly an act of investment — an agreement or a collection — a mixture of agreements founded upon a single occasion.

This being understood, obligations may be distinguished into original and adjective. I call those original, of which express mention is made in the contract itself: I call those adjective, which the law thinks proper to add to the first. The first turn upon events which

* *N. B.* I have not found among the manuscripts a table corresponding with this of ablative events.—*Dumont.*

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the contracting parties have foreseen; the others upon events which they could not foresee.*

It is thus that in every country the law has supplied the short-sightedness of individuals, by doing for them what they would have done for themselves, if their imagination had anticipated the march of nature.

The enlightened legislator, recognising these factitious obligations as being the work of his hands, will give them his support upon true and simple reasons, drawn from the principle of utility. Lawyers have founded these obligations upon fictions; that is to say, upon facts which never existed. Where there has been no convention, there they suppose that there have been one, two, a thousand; they have the effrontery or the folly to ascribe wishes to you which they avow you never had: and this what is called *reasoning* among them.

To decompose a certain contract — to show one by one all the pieces of which it is formed — to exhibit the collection of obligations included in this contract, — this is a species of mechanism hitherto unknown.

It is not only upon the author of the fundamental convention that the law imposes these adjective obligations; it imposes them also upon other persons, in consequence of certain connexions which they have with the principal person. It is thus that obligations pass to heirs, and sometimes to creditors. Why? Because their respective rights only extend to the net value of the goods of their principal.

An article which is in my custody is lost: ought I to be responsible? It is a case which divides itself into an infinity of others. It may have been of an abstract value, a sum of money, a wild animal. Ought it to be considered or not as in my custody? Did it possess the character of a loan, a deposit, or a pledge? And so on of the rest. Observe, that though in these cases mention is made of contract, there are many cases in which I may have a thing without convention, without promise, without any act of will in reference to it.

The legislator has two shoals to avoid, that of restraining services, and that of favouring negligence. If you give too great an extent to responsibility, you incur the first of these dangers — if you give too little, you incur the second.

I am not about to enter here into a critical examination of the Roman contracts: it would be a work of deadly *ennui*. If we were to imagine all possible defects — in their division, in their nomenclature — it would be difficult to exaggerate them. The idea of *reciprocal promises, of mutual dispositions*, so familiar to all the world, finds itself so obscured in this mischievous and absurd system of jurisprudence, that the lawyers, who have not ceased to explain it, always feel the necessity of new explanations. In vain they heap volumes upon volumes: light never breaks in upon the chaos.

Everything here must be done over again: a language which pretends to be learned has to be forgotten — a simple and familiar language to be taught; and those who know nothing, possess more than half an advantage over those who have to forget what the lawyers call among themselves by the name of science.

Section 2. Division of Contracts.

A contract subsists between two parties when there exists between them a disposition either of goods or services, or a legal promise made by the one for the profit of the other.

A disposition or a transfer of goods is an act, in virtue of which a change is made in the legal right of two or more persons with regard to a certain object.

Contracts may be either momentary or permanent.

They may be divided into three classes: —

1. Promises.
2. Disposition or transfer of goods from one party to another.
3. Mixed contracts, containing both dispositions and promises.

Dispositions and promises may be either unilateral or bilateral, according to whether there is reciprocity in the engagement or not.

I. UNILATERAL PROMISES.

1. Bail.
2. Simple deed of donation, &c.
3. Unilateral promise of marriage.

II. UNILATERAL DISPOSITION.

1. Gratuitous donation.
2. Legacy.
3. Gratuitous loan.
4. Deposit to be gratuitously kept.
5. Hypothecation *in futurum*.

III. BILATERAL PROMISES.

1. Agreement for sale, purchase.
2. Agreement for exchange.
3. Wager.†

* A horse is lent: he falls ill: ought the lender or the borrower to pay for his cure? A room is let, without mention being made of for what time — what notice ought to be given to the occupier before he is obliged to quit? According to the variety of contracts, and of things which are the subjects of them, a corresponding variety of adjective obligations is required.

† The species of contract called wagering ought to be an object of particular attention. According to the application which is made of it, it may include in itself all the force of a law, and of a law which acts with the double sanction of

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4. Agreement carrying an obligation to enter into a certain contract.
5. Bilateral promises of marriage.

IV. BILATERAL DISPOSITIONS.

1. Exchange.
2. Sale and purchase.
3. Exchange of money.
4. Purchase of bills of exchange.
5. Purchase of rent without mortgage.
6. Purchase of rent with mortgage.

V. MIXED CONTRACTS, CONTAINING DISPOSITIONS AND PROMISES.

1. Loan of money, gratuitous or at interest.
2. Assurance, gratuitous or for a premium.
3. Renting a house, &c.
4. Letting a house, &c.
5. Pledging.
6. Marriage contract.
7. Contract of apprenticeship.
8. Hiring of a servant, of a workman, in a manufactory, or in agriculture or other productive labours; of a clerk, of a shopman.
9. Voluntary enrolment.
10. Donation in trust.
11. Legacy in trust.
12. Articles of partnership in commerce.
13. Deposit under an order of court.
14. Articles of partnership in manufactures.
15. Deposit in respect to a price to be paid *in futurum* by the depositor.
16. Loan of goods for a price *in futurum*.
17. Adoption.

SPECIES OF DEPOSITS.

These species are constituted by the different ends for which the contract is established.

(1.) *On account of the depositor:* —

1. Simply to keep the thing—housekeeper, innkeeper.
2. Simply to transfer from one place to another — carrier, captain of a vessel, for transport.
3. To improve—farrier, dyer, miller, tailor.
4. To employ without amelioration, but without consumption, that is to say, entire destruction — as tools, fixed capital of a manufacture, servants.
5. To be consumed — as wood for firing, drugs for dying, ink for writing.

(2.) *On account of the depositary:* —

6. Deposit of a thing gratuitously lent.
7. Deposit of a thing hired.

(3.) On account of the depositor and depositary: —

8. Association with regard to things acquired by a co-associate, for the profit of the society.

(4.) On account of the one or the other, according to the event: —

9. The pledger, and receiver in pledge.

CHAPTER XVII.

NINTH GENERAL TITLE OF THE CIVIL CODE.

Of the Domestic and Civil States.

THIS general title is established, that it may serve as a general depot for the laws which regard the different offences against these respective states. Here ought to be found the catalogue of the classes of persons who possess rights or duties due to them: — masters, servants, guardians, wards, parents, children, proxies, &c.; whilst with respect to political conditions — that is, those which are founded upon some political power, or some duty subordinate to it — reference should be made to the constitutional code.

The domestic or civil state is only an ideal base about which are ranged rights and duties, and sometimes incapacities. It is proper in all conditions to distinguish the work of nature, or of the free man, from the work of the law. The natural state is the foundation, the base; the legal state is formed by the rights, the obligations, which the law adds thereto. To know a state, is therefore to know separately the rights and the obligations which the law has added to it: but what is the principle of union which binds them together, to make the factitious thing which is called a *state*, a *condition*? It is the identity of the investive event with respect to the possession of that state.

Under this head, the most striking examples will be found of the variety and extent of adjective obligations. A boy and a girl marry —they do not see at first in their union anything more than the accomplishment of the wish which had been the motive of it. At the same moment the law interposes and imposes upon them a multitude of reciprocal obligations, of which the idea had never been presented to their minds.

It is true that this distinction of fundamental and adjective obligations depends only upon the negligence of the legislator If he had taken pains to facilitate the knowledge of the laws, the citizen would have

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punishment and reward. It may be employed in the way of subornation for all imaginable crimes. Bet, for example, that a certain person does not live beyond a certain time, and trace the consequences which such a bet may have.

In the case of losses by fire and shipwreck, assurance is only a species of wager; and its effects as an instrument of subornation are only too well known.

It may have a mischievous effect by its application to adjective law — to procedure. During the time that the sex of the Chevalier D'Eon was doubtful, it became the subject of a wager. The action was brought in one of the courts of Westminster, and many persons were called to appear and depose upon this subject. This species of wager might be designated by the name of wager of vexatious inquisition.

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known all the obligations which attached to him upon assuming a certain condition, and all, whether principal or accessory, would have been equally voluntary.

In the notice of civil conditions, all trades should be comprehended. All professions which have particular rights, or duties, or which are subjected to certain incapacities.

In the article appropriated to each condition, the following should be the order of the matter:—1. Methods of acquisition; 2. Methods of losing; 3. Rights; 4. Duties; 5. Incapacities; if there be any. Rights ought to precede duties, because in many cases they are the source of duties. If there be a chronological order in the events from which rights and duties take their date, such order should be followed. The effects which result from each event ought to be distinct from those which result from any other.

CHAPTER XVIII.

TENTH GENERAL TITLE OF THE CIVIL CODE.

Of Persons capable of Acquiring and of Contracting.

FROM the word person, and others which are employed to represent it (such an one, he who, &c.) is derived a collection of titles which should have their common centre in this one.

To whom shall the law attribute the capacity of acquiring and of contracting? To all, says the general rule. If there be persons to whom it is refused, this ought to be in consequence of some particular reason. Thus without the exceptions, there would be no necessity for the general rule. It is only required that the exceptions may be placed under it.

Thus the law will not allow the right of investiture to a benefice in the church to a Jew, lest he should abuse it to the prejudice of the church. It does not allow a like right with regard to real property to a minor, lest he should abuse it to his own prejudice. It does not allow this right, nor even that of its occupation, to a madman, lest he should abuse it, either to his own prejudice or to that of another.

CHAPTER XIX.

OF THE PARTICULAR TITLES OF THE CIVIL CODE.

IN the Penal Code, the titles are easily arranged: they correspond with the catalogue of offences. It is not the same with the Civil Code: the particular titles may equally be placed under any of the general titles, as we shall soon see.

It is not possible to complete a penal code without having determined the plan of the civil code; for to have a complete penal code, it is necessary that the whole body of the law should be found included there — at least by reference. Thus true is it that the idea of a complete penal code includes in itself the complete idea of all the subjects of the other codes. But when all the materials are collected, it remains still to assign them their places.

What is the clue to guide us in this distribution? It is still the principle of utility.

The laws being given, why has the legislator prepared them? The answer is simple, as it is incontestable: "With the intention that each disposition should be present to the minds of all those who are interested in the knowledge of it, at the moment in which this knowledge may furnish them with motives for regulating their conduct." For this purpose it is necessary — 1. That the code be prepared altogether in a style intelligible to the commonest understanding. 2. That every one may consult and find the law of which he stands in need, in the least possible time. 3. That for this purpose the subjects be detached from one another, in such manner that each condition may find that which belongs to itself, separated from that which belongs to another.

"Citizen," says the legislator, "what is your condition? Are you a father?" Open the chapter "*Of Fathers.*" "Are you an agriculturist?" Consult the chapter "Of Agriculturists."

This rule is both simple and satisfying. Once announced, it is comprehended: it cannot be forgotten. All legislators ought to follow so natural a method, says Philosophy — Not one of them has ever dreamt of it, replies the lawyer.

The catalogue of all these conditions may be found in the body of the laws, under two different orders. Under the general title of States or Conditions, it may be placed in an analytical and systematic form, for the instruction of lawyers. In the index it ought to be found in alphabetical order, for the convenience of the subjects.

There are many subjects which might be sought for indifferently, under more than one title: but in all cases in which either a *concrete* or an *abstract* name may be given to a title, the concrete name ought uniformly to be employed in the text, and the abstract name referred to the index. Thus in the text ought to be found the titles *of Husbands, of Wives*, and not that of Marriage; the title of Heirs, and not that of Successions.

But all these titles rejected from the text, ought to be carefully collected in the index; for it is with respect to this appendix to the book, altogether different from what it is with respect to the book itself — the more voluminous it is, the more easily it is consulted.

After the titles drawn from persons, come those drawn from material beings — from

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things. These are preferred to abstract titles for two reasons:—1. Because they must naturally present themselves to the least instructed minds; 2. Because the catalogue is more ample and uniform.

At last we reach the titles drawn from the different kinds of *contracts*. It is true that the names of contracts are abstract terms: but contracts are the acts of persons; and there is no kind of contract which does not give a particular name to the persons who engage in it. It is not necessary, therefore, to employ concrete titles, but reference may be made to the persons themselves. Thus, instead of saying *purchase*, *sale*, *borrowing*, *lending*, we may say, *purchaser*, *seller*, *borrower*, *lender*. This method will better preserve the uniformity of the plan, and the great end of the arrangement, which is to present to every one that which belongs to him, separate from what does not belong to him. Besides, all contracts have not two correlative names which correspond with those of the two contracting parties. The greater number have but one — for example, *deposit*, *assurance*. Also with regard to each contract, there may be others beside the mutual obligations — there may be particular obligations on particular parties: instead, therefore, of heaping them all under the head of assurance or deposit, it would be better to make two separate articles, — *assurer*, *assured* — *depositor*, *depositary*.

Under this point of view, the titles of things contracted for would only be a consequence — a subdivision of the *personal titles*.

A question to be cleared up:— There are few contracts which do not in some manner or other refer to things. Such a contract being supposed, ought the text of the laws regarding it to be found under the title of contracts, or under that of things?

If it refer to things in general, and dispositions in general, it should be placed under the title of contracts. If it refer to a particular kind of thing, and a disposition which only applies to this kind, and not to another, it should be placed under the title of things. Example, sale of a horse; — the seller bound to warrant it free from certain diseases, unless he stipulates to the contrary; — the warranty does not apply to other kinds of animals. It would be better that this obligation should be found under the title of *horses*, than under that of *sellers*, since it does not attach to any other kind of seller beside the seller of horses.

The following is an idea of the subordinate titles which would find place under a real title. I take for example, that of horses:—

It is to be observed, that regard is solely paid to the arrangement, and not the matter. The laws which are or have been cited, are cited without deciding whether they are good or bad: they are counters which I use in reckoning — it would be misapplied labour to examine their defects in this place.

1. Persons incapable of acquiring property in horses, or to whom the acquisition is interdicted. *Ex.* Catholics in England, with respect to horses of a certain value. Written law of England. (Offence against the sovereignty.)

2. Particular means of acquiring them: capture of a highway robber on horseback, and conviction of the delinquent. (Written law of England — remuneratory law.)

3. Limitations of the right of occupation. Cruelty prohibited. Prohibition as respects the using of them for riding by Christians. (Law in certain provinces of Turkey.) Prohibition of the exportation of war horses. Offence against the public force.

4. Acts commanded connected with their use. Marks to be imprinted upon hired horses, that thieves who use them may be recognised, or that the individuality of the animal may be proved, for the purpose of levying a tax upon it. Reference to the personal titles of post-horse keepers, carriers, innkeepers, &c.

5. Limitations of exclusive property; — rights granted to public officers to employ them on certain conditions — to seize them for the military service — to destroy them for the purpose of stopping an epidemic, &c.

6. Limitation of the right of disposal — Example, prohibition to export, &c.

7. Adjective obligations attached to the rights of occupation. *Ex.* Taxes to be paid periodically. Taxes to be paid occasionally at turnpikes. Obligations imposed in consequence of borrowing, hiring, pledging, forced labour, — as of feeding, physicking, &c. Reference to the titles of contracts, borrowers, lenders, hirers, travellers, &c.

8. Adjective obligations attached to the right of disposal. Example: Presumed warranty against disease and other defects.

9. Adjective rights over services attached to the right of occupation. Right to cause the horses to be received and taken care of by innkeepers, farriers, &c. Reference to the personal title of people in trade, in which is exhibited the obligations under which they exercise their respective trades, of serving whoever requires them. (Offence, non-reddition of service.)

10. Adjective rights over services attached to the right of disposal. Example, Right of having a place assigned for one's horse in a horse market, by the person employed in keeping the market. (Offence, non-reddition of service.)

It may be remarked, that the particular titles of the civil code are not constructed in the same manner as those of the penal code. In the latter, the point of re-union is the identity of the kind of act which is referred

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to: everything is referred, for example, to theft, homicide, adultery, &c. In the titles of the civil code, the point of re-union is the identity of the person or the condition: — everything is referred to fathers, husbands, masters, guardians, &c. There is, however, a more distant point of view, in which all distinctions disappear. If the distinctive principle of the personal codes are completely followed out, it will be found that the particular titles of the penal code belong to them; for to commit an offence is to become a delinquent — a thief, a seducer, an assassin, a forger, &c. The agent might receive his denomination from the act.

Doubt to be cleared up:—In most cases the same law necessarily bears upon two persons at least at one time; — he upon whom an obligation is imposed — he upon whom a right is in consequence conferred. Under each of these two titles the law ought to be mentioned; but under which of them ought it to be stated at full length? This depends upon circumstances, and the choice is not of much consequence.

The most natural procedure appears to be this. Present the entire law to that one of the parties who has most need to be instructed. Which, then, is this party? It is commonly him upon whom the duty is imposed, because of the penalties which accompany the infraction of this duty, — because the punishments which the law is forced to employ are generally stronger than the rewards or advantages which it confers.

There are also other reasons for preferring this arrangement: —

1. There are many cases in which the favoured party is the whole public, and not an individual; for example, taxes. All that it is necessary to address to the public in the general penal code, is the definition of the offence — *non-payment of taxes*, with suitable references. Those things which serve to indicate the different taxes imposed, and the accessary obligations added for insuring the collection of these same taxes, should be referred to the particular titles of the different classes taxed, and of the persons charged with the collection of the taxes.

2. The party upon whom it is wished to impose an obligation, is necessarily easily pointed out and distinguished. The legislator, without doubt, ought not to be ignorant what classes he intends to favour; but there may be many classes favoured by the same right, and it may be more difficult to particularize them.

3. It may also happen, that certain classes may find themselves favoured, of whom the legislator did not think. When a tax, for example, is laid upon a certain species of linen, — the object of the tax, as such, may only have been the general good of the state in respect of its wants, which have rendered contributions necessary. The public in general will have been the party intended to be favoured, without thinking of any other. There may, however, be a class of men who will derive from it a more immediate advantage: such would be found in persons engaged in a rival manufactory, manufacturing a species of cloth more or less suitable for the same purposes.

This detail would have been unnecessary, except for the light it throws upon the plan of distribution; for otherwise, it is of little consequence whether the law be placed under one title or another, provided the references are sufficiently numerous and well chosen, and that the mass be divided in such manner that each class be only charged with such matters as particularly interest it.

Such is the plan of distribution which I would propose for matters of civil law. It appears to me the clearest — that in which the atoms of the law would most easily arrange themselves around their centre, by an attraction which appears natural in proportion as it is simple. The sketch of this plan may not be in sufficient detail for those who have not attained a certain degree of legal knowledge; but those who have studied what has been honoured with the name of *system* — those who have penetrated into the labyrinth of the civil laws, will at once be sensible how new this plan of distribution is, and that if it have any merit, it is that of introducing a uniform principle, which presides over the whole arrangement.

CHAPTER XX.

OF ELEMENTARY POLITICAL POWERS.

THE Constitutional Code is principally employed in conferring powers on particular classes of society, or on individuals, and in prescribing their duties.

Powers are constituted by exceptions to imperative laws. Let me explain myself.

Every complete law is in its own nature *coercive* or *discoercive*. The coercive law demands, or prohibits: it creates an offence, or in other terms, it converts an act into an offence: — "Thou shalt not kill," — "Thou shalt not steal." The discoercive law creates an exception: it takes away the offence; it authorises a certain person to do a thing contrary to the first law: "The judge shall cause such an individual to be put to death," — "The collector of taxes shall exact such a sum."

Duties are created by imperative laws addressed to those who possess powers: "The judge shall impose a certain punishment, according to certain prescribed forms."

The constitutional code will include an

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explanatory part, serving to indicate those events by which certain individuals are invested with certain powers: — succession, nomination, presentation, concession, institution, election, purchase of place, &c. &c.; and the events by which such individuals are divested of such powers: — dismission, amotion, deposition, abdication, dereliction, resignation, &c.

To analyze, to enumerate all the possible political powers, is a metaphysical labour of the highest difficulty, but of the greatest importance. In general, these rights, these powers, will not much differ from domestic rights and powers. If they were placed in a single hand, they would only differ in extent; that is to say, in the multitude of persons and things over which they would be exercised. But their importance has ordinarily led to their being divided among many hands, in such manner, that for the exercise of a single kind of power, the concurrence of many wills is required.

Hitherto the political powers of one government have been, with regard to the political powers of another government, objects which have had no common measure. There has been no correspondency. There are only local names for expressing them: sometimes the names themselves differ—sometimes the same names are expressive of objects altogether different. There is no court-guide which would serve for every court—there is no universal political grammar.

The titles of offices are mixtures, dissimilar aggregates, which cannot be compared together, because no one has ever tried to decompose them — because no one has ever known their primordial elements. These elements, if any one shall ever discover them, will be the hitherto unknown key of every given political system; and the common measure of all actual and possible systems. But how shall I frame a uniform plan for the distribution of the political powers in any state? — from what language shall I borrow the vocabulary of offices? If I employ the French, it will only serve to express the distribution of powers in the French government. What relation is there between the consuls of France and the consuls of Rome, or the consuls of commerce? — between the king of England, the king of Sweden, the king of Prussia? — between the emperor of Germany and the emperor of Russia—between the ancient French peer and duke — the English duke and peer—the grand-duke of Russia and the grand-duke of Tuscany — between the mayor of Bordeaux and the mayor of London? &c. &c. A volume would not suffice to point out all these disproportions.

Such is the first difficulty. It has been the torment of those who have had to give an account of a foreign constitution. It is almost impossible to employ any denomination to which the readers shall not attach ideas different from those which it is intended to convey.

This confusion will cease, if it be possible to employ a new nomenclature, which shall not be composed of official names, but which shall express the elementary political powers exercised by those different offices.

Two methods may be employed for this decomposition: — 1. By considering the end towards which they are directed: — end of interior or exterior security—end of security against crimes, or against calamities, &c.;—2. By considering the different methods by which these ends may be attained: the method of operating may have for its object persons or things. This method of analyzing political powers presents the following results:—

1. *Immediate power over persons.* —This is what is exercised over the passive faculties: it is the power of doing with one's own hand acts whose effects terminate upon the person of another, whether upon his body or his mind. It is the power of doing acts which would be offences against the person, on the part of an individual who was not authorized. Directed to a certain end, it is the power of punishing: directed towards another end, it is the power of restraining and constraining. This power is the foundation of all others.

2. *Immediate power over the property of others.* — This is the power of making use for the public, of things the principal property in which belongs to individuals. For example, the power of a minister of justice to break open the house of a person not accused, that he may seek for an accused person there — the power of a public courier, in case of need, to make use of the horse of an individual.

3. *Immediate power over public things;* — that is, of those which have only government for their proprietor.

4. *Power of command over persons, taken individually.* — This operates upon the active qualities. It has commonly for its foundation immediate power over the person, without which he who commands would not be sure of finding motives for making himself obeyed. In the beginning of political societies, these two powers must have been united in the same hands, as they still are in domestic society. The habit of obedience being once established, we have almost lost sight of the dependence in which the more elevated power is found, in respect of that from which it springs. The first is only exercised by kings and their ministers; they have left the second to a baser sort of men. Ulysses chastised with his own hand the petulant Thersites. Peter I. was also the executor of his own decrees: he proudly struck off with his imperial hands, the head of the wretch whom he had con-

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demned. The office of executioner does not degrade the emperors of Morocco; and their dexterity in these punishments is one of the pomps of their crown. In civilized states, the nobler power depends no less upon the ignoble power, than in barbarous countries;—but the disposition to obedience being once established, everything operates without our thinking of the constraint which is its first foundation.

5. *Power of command over persons taken collectively.* — A state must be very small, in which individuals could be governed one by one: this can only take place in a family. A company of soldiers can only be manœuvred when a head is given to the whole together. It is in the power of making men act by *class*, that the strength of government consists.

6. *Power of specification.* — I thus denominate the power of determining of what individuals particular classes shall be composed, over whom command may be exercised. This very extensive power is only, in respect to persons, the power of investment or divestment with regard to a certain class — class of nobles, class of judges, class of military, class of sailors, class of citizens, class of foreigners, class of offenders, class of allies, class of enemies.

The power of specification subdivides itself into two principal branches: specification of persons — specification of things.

Power *over persons* subdivides itself into the power of *locating* in a class, and the power of *dislocating*.

Power *over things* consists in setting them apart for a certain use, and making it a crime to employ them for any other.

To specify *a time, a day* as set apart for a religious festival, on which it is unlawful to work.

To specify *a place* as consecrated; for example, a church, an asylum.*

To specify *a metal* as the legal coin of the country.

To specify *a dress* as appropriated to a certain condition, &c. The right of specification over things embraces the totality of things.

It ought to be remembered, that each of these powers may be indefinitely subdivided, according to the number of hands in which it is placed, and the number of wills which may be required for its legitimate exercise. Hence the right of initiation, or right of proposing; right of negation or right of rejecting. The co-possessors may form only a single body, or many separate bodies. The concurrence of many bodies may be necessary to the validity of an act of command, as well as the concurrence of many individuals in a single body.

All these powers may be possessed in chief, or in a rank more or less subordinate.

The subordination of a political power to another, is established — 1. By the cassability of its acts, or their liability to be abrogated; 2. By its subjection to the orders it receives.

7. *Attractive power.*—I thus call the power of rewarding or not rewarding. — Power of influence, which is partly remuneratory and partly penal. Influence is one source of motives. In Government, it is constituted —

1. By the power of locating in regard to desirable offices — Reward.

2. By the power of *dis*locating in regard to desirable offices — Punishment.

3. By the power of locating in regard to undesirable offices — Punishment.

4. By the power of *dis*locating in regard to undesirable offices — Reward.

There are three other sources of influence less direct: —

1. Free employment of wealth.

2. The power of rendering or not rendering all sorts of free services.

3. Influence founded upon the reputation of wisdom.

The attractive power which is exercised by means of reward, is more dangerous than the coercive power, because it is liable to be more arbitrary. Every rich man possesses a a portion of it in consequence of his wealth, without possessing any political power by name. It is only in a small number of cases that it has been possible to subject the exercise of this power to fixed rules. The laws against bribery and corruption are examples, and every one knows how difficult it is to execute the laws against the purchase of suffrages at an election, or against the venality of persons in official stations. Success is most easily attained by indirect rather than direct means: — by rendering the offence difficult of commission; by diminishing temptation, by taking away the means of its concealment; by the cultivation of sentiments of honour, &c.

Recapitulation — Analysis of Abstract Elementary Political Powers.

1. Immediate power over persons.

2. Immediate power over the things of another.

3. Immediate power over public things.

4. Power of command over persons taken individually.

5. Power of command over persons taken collectively, or over classes.

* When any such power exists without limits (that, for example, of specifying places as sanctuaries), nothing more is required for destroying the effect of all laws sanctioned by any considerably afflictive punishment.

The clergy in England once endeavoured to obtain possession of the landed property in England by converting it into burying grounds, until the legislature put a stop to the progress of such metamorphosis.

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6. Power of specification or classification —
   1. With regard to persons.
   2. With regard to things.
   3. With regard to places.
   4. With regard to times.

7. Attractive power. Power of granting or not granting rewards.

CHAPTER XXI.

OF ELEMENTARY POLITICAL POWERS —

Subject continued.

THE foregoing enumeration of political powers presents a new nomenclature, which requires justification, and can only be justified by showing that the divisions most generally adopted at present, leave all these powers in a state of confusion and disorder.

By some, these elementary powers are divided into two classes: 1. *Legislative power;* 2. *Executive power*. Others add to these a third class — *power of imposing taxes;* others again add a fourth class — *judicial power*.

When one of these plans has been adopted, it has been chosen without much regard to their differences; everything has been then considered as sufficiently defined, and reasons have then been sought out to support it. I shall endeavour to show how vague and obscure these terms are.

By each one of them, sometimes one thing and sometimes another, is understood. Of each power no one knows to which class to refer it — no two persons entertain the same ideas as to what is called *legislative* or *executive* power.

Between the condition of a science, and the condition of its nomenclature, there is a natural connexion. With the best arranged nomenclature, we may still reason badly; but with a badly arranged nomenclature, it is not possible to reason correctly.

Legislative Power. — Everybody agrees to understand by this, the power of commanding. Little scruple is made of employing this expression when this power is only exercised over classes, especially when the extent of these classes is considerable.

This title is more willingly yielded to a power, whose orders are capable of perpetual duration, than to a power whose orders are in their own nature perishable. It is agreed to consider that the exercise of this power is free from the restraints which characterize judicial power. Sometimes it is supposed that it is exercised in chief; sometimes the same word is employed to express cases in which it has only a subordinate exercise. We are much inclined to call that legislative power, which is exercised by a political body: executive power, that which is exercised by a single individual.

Judicial Power. — Among the authors who have considered this power as distinct from legislative power, I have not found one who has appeared to understand the difference.

The orders of the legislator bear at the same time upon a numerous class of citizens. But do not those of the judge the same? does he not judge communities, provinces?

Those of the legislator are capable of perpetual duration: those of the judge are the same also.

Those of the judge bear upon individuals: but among the acts which emanate from the power called legislative, are there none which do the same?

Before a judge can issue his orders as a judge, a concurrence of circumstances is requisite, which is not requisite for legalizing the acts of the legislature: —

1. It is necessary that an interested party should come and require the judge to issue the order in question. Here there is an individual to whom belongs the initiative, the right of putting into activity the judicial power.*

2. It is necessary that the parties to whom the orders of the judge may prove prejudicial should have the power of opposing them. Here there are other individuals who have a species of negative power — power of stopping the acts of the judicial power.

3. It is necessary that it should have proof produced of some particular fact upon which the complaint is founded, and that the adverse party be permitted to furnish proof to the contrary. Here, then, is the person accused whose concurrence is required.

4. Where there is a written law, it is necessary that the order of the judge should be conformable to what such law prescribes: — order to the effect of punishing, if it respects a penal case — order to the effect of investing the party with a certain right, or of divesting him, if it respect a civil case.†

Executive Power. — At least twelve branches of this power may be distinguished: —

1. Subordinate power of legislation over particular districts — over certain classes of citizens — even over all, when it refers to a particular function of government. The smaller the district—the shorter the duration of the order — the more inconsiderable the object, the more one is led to subtract this power from the *legislative* species, in order to carry it to what is called the *executive*. When the supreme power does not oppose these subordinate rules, it is the same as if it adopted

* This first condition may be wanting in those cases in which the judge acts in virtue of his office: for example, when he causes the arrest of an individual who has behaved improperly in court.

† This fourth condition would be wanting when there is no written law — when custom is conjectured and followed. In new cases there is no custom to follow — and all cases were at first new.

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them: these particular orders are, so to speak, in execution of its general will. But whatever it is, it is the power of command.

2. Power granted to classes of men — to a fraternity — to a corporation: powers of legislation, the power of making bye-laws: it is still the power of command. To say, I will maintain the laws made by a certain body, is the same as making them one's self.

3. Power of granting privileges to individuals, titles of honour, &c. It is the power of specification *in individuos*.

4. Power of pardoning. If it be exercised after inquiry into the facts, it is a negation of the judicial power: if it be exercised arbitrarily, it is the legislative power. Power of command exercised in opposition to judicial orders.

5. Power of locating or dislocating subordinate officers. It is a branch of the power of specification.

6. Power of coining money, of legalizing it, of fixing its value — specification *in res*.

7. Military power. That of enrolment and disbanding, is a branch of the power of specification *in personas*. That of employing, is a branch of the power of command. The circumstance which has caused it to be considered as a separate power, is the use for which it is established.

8. Fiscal power. This power in itself does not differ from that possessed by the cashier of an individual, with regard to the money which is entrusted to him. It is constituted a public power, in consideration of the source from which the money is derived, and the end for which it is designed.

9. Power of administration over the magazines, munitions of war, and other public things. This is the same as the management of a house: the object alone makes it a political power.

10. Power of police — specification — command. We may observe, that for the exercise of military power, the power of police, and even of management, a certain quantity of immediate power is requisite, both with regard to the persons and the goods of the citizens in general. In order to make use of any power whatever, it is necessary that the superior officer should possess immediate power over his inferiors, either by being able to dislocate them, or by some other means.

11. Power of declaring war and making peace. This is a branch of the power of specification. To declare war, is to transfer a class of foreign friends into the class of foreign enemies.

12. Power of making treaties with foreign powers. The obligation of treaties extends to the mass of the citizens: the magistrate who makes a treaty, exercises therefore a power of legislation; when he promises to another sovereign, that his subjects shall not navigate a certain part of the sea, he prohibits his subjects from navigating there. It is thus that *conventions* between nations become *internal* laws.*

I do not know to what length this subdivision of the executive power may be carried: the relation which each individual branch bears to each of the others is altogether undetermined. They are always supposed to have determinate limits, but these limits have never been assigned to them.

The term *executive power* presents only one clear idea: it is that of one power subordinate to another, which is designated by the correlative appellation of *legislative power*.

Need we then be astonished that there is so much opposition among political writers, when all their works have been composed of terms so vague, so ill-defined, and to which each has attached the ideas to which he was accustomed!

It is not necessary absolutely to exclude these terms adopted into the vocabulary of all the nations of Europe; but it was necessary to show how far they were from representing the true elements of political powers.

The new analysis which has been attempted has many weak points: it is a subject nearly the whole of which remains to be created. The work has been begun, but it will require much labour and patience to finish it.

CHAPTER XXII.

PLAN OF THE POLITICAL CODE.

If we detach from the code of laws a part which should be called the *constitutional code*, the following subjects might be referred to it: —

1. The methods of acquiring the different offices established in the state, and also the methods of losing them. The greater share the people have in the government, the greater the space which this part will occupy.

2. An exposition of the powers annexed to these offices. This part would be assimilated in form to the civil code.

3. An exposition of the duties attached to these same offices. This part would be assimilated in form to the penal code.

4. An exposition of the formalities which ought to accompany the exercise of the powers attached to these offices, in those cases in which they are exercised by political bodies. This part would sometimes appear under a penal, sometimes a civil face: under the first, when punishments are pronounced against individuals; under the second, when there is

* Those who have ranked this power among the attributes of the executive power, have not observed that it was purely a power of command, a power of legislation.

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no other punishment than that of nullity as to the acts of the body.*

5. To this code would be consigned the laws which directly bear upon the office of the sovereign. Laws of this kind clearly exhibit certain acts as directed or prohibited. From this quality they bear the aspect of penal laws. On the other hand, it is natural that they should not express any punishment to be inflicted in case of contravention. Who could inflict such punishment? In this respect they would be contrasted with the penal law.

Among these laws, the following species may be distinguished: —

1. Privilege granted or reserved to the original mass of the nation — as liberty of worship — right of carrying arms — right of confederation.

2. Privileges granted to provinces acquired, whether their union to the body of the state arise from succession, or from voluntary union; as that of not being taxed but by themselves.

3. Privileges granted to conquered districts at the time of capitulation, and confirmed by treaties of peace.

4. Privileges granted to districts ceded by treaty without having been conquered.

Although it may not be easy to apply positive punishment to a delinquent sovereign, such laws ought not to be regarded as of no value. They are of great importance, though positive punishments would be of no force: they are attended by the immediate punishment of dishonour to the sovereign, and discontent on the part of his subjects: — by ulterior punishment in revolt, and loss of sovereignty. Hence we see in many European countries, sovereigns scrupulously respecting the privileges of subjects and of provinces.

CHAPTER XXIII.

PLAN OF THE INTERNATIONAL CODE.

THE international code would be a collection of the duties and the rights existing between the sovereign and every other sovereign.

It may be divided into the universal code, and particular codes.

The first would embrace all the duties that the sovereign was subject to — all the rights with which he was invested with regard to all other nations without distinction. There would be a particular code for every nation, with which, either in virtue of express treaties, or from reasons of reciprocal utility, he had recognised duties and rights which did not exist with regard to other states.

The universal code would contain concessions on the one part, demands on the other: ordinarily, reprocity would have place.

These rights and these duties between sovereigns, are properly only the rights and duties of morality. For it can scarcely be hoped that all the nations of the world will enter into universal treaties, and establish tribunals of national justice.

Division of the laws which compose a particular code: —

1. Laws executed — Laws to be executed. The first are those which regard the two sovereignties in their character of legislators — when in virtue of their treaties they make conformable engagements in their collections of internal law. A certain sovereign engages to prevent his subjects from navigating a certain part of the sea; he ought then to make a change in his internal laws prohibiting this navigation.

Laws to be executed are — 1. Those which are fulfilled simply by abstaining from the establishment of certain internal laws. 2. Those which are fulfilled by exercising or abstaining from the exercise of a certain branch of sovereign power; by sending, or abstaining from sending, assistance by troops or money to another foreign power. 3. Those whose fulfilment only regards the personal conduct of the sovereign; for example, those by which he is obliged to employ or not to employ a certain formula in addressing a foreign sovereign.

Second Division — Laws of peace — laws of war. — Those which regulate the conduct of the sovereign and his subjects in time of peace or war, towards a foreign sovereign and his subjects.

The same distribution which has been followed with regard to internal laws, whether civil or penal, should guide the arrangement of the international laws.

In the civil code, for example, the demarcations of the rights of property with respect to immoveables, may be the same. There are some properties which belong in common to the subjects of a given sovereign. There may be some which belong to a given sovereign, and a certain foreign sovereign, as seas, rivers, &c. Thus, in former times, the republic of Holland had acquired a species of negative service at the expense of Austria in the port of Antwerp. Thus, by the treaty of Utrecht, the English had acquired another with regard to the port of Dunkirk. The right of marching troops across a foreign country is a species of positive servitude.

War may be considered as a species of procedure, whereby it is sought on the one part or the other, to obtain or keep possession of advantages, to which each thinks himself entitled. It is a writ by which execution is

* In England, the king can perform no act without having some individual, or some officer, responsible for it. He cannot even arrest an individual. In this manner his power is limited by the responsibility of those who are necessary as the instruments of it: and it is thus that the punishment of nullity is attached to actions which it is wished to prevent.

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made upon a whole people. The attacking sovereign is the plaintiff; the sovereign attacked is the defendant. Those who sustain an offensive and defensive war, resemble an individual who has filed a *cross-bill*, and sustain two characters at the same time. This parallel is of no assistance as to the form or arrangement of the laws, but use may be made of it by the introduction of the principles of humanity, which would soften the evils of war.

When two sovereigns are at war, the condition of their subjects is respectively changed; from foreign friends they become foreign enemies. This part of international law brings us back to the plan of particular codes, in which sovereigns might stipulate for clauses relative to these changes.

CHAPTER XXIV.

PLAN OF THE MARITIME CODE.

THE Maritime Code has many parts related to the penal code, the civil, the military, and the international codes.

1. *Penal.* — When robbery is committed upon the sea, or by persons who come by sea to commit it, in certain cases a particular name is given to it—it is piracy. But what is the difference whether these offences have for their theatre the dry land, or land covered with water? And wherefore give them different names?

2. *Civil.*—The changes which the sea experiences, and which it occasions, give rise to many methods of acquiring and losing. Lands are abandoned by it — islands are discovered in it — shipwrecked goods are thrown up by it: from these result a great number of particular arrangements.

Ships are at once houses and carriages. Large vessels are floating castles. The sea, if we may use an expression so contradictory in appearance, is a species of immoveable always in motion, whose value is in certain situations very considerable, in others null: here it is fruitful, there barren; here it becomes dry, and there it again covers the dry land. Everywhere it is a highway, and a highway that repairs itself. In its furthest distances, it is as a heath which leads to nothing, and brings back nothing.

This is not all: it is too often a field of battle, and by this the maritime code has a part in common with the military code.

We see in an instant the subjects which it offers for the international code. The right of chase — the right of harvest, or, as it is called when speaking of the sea, the right of fishing — cannot belong everywhere to all the world. It follows, then, that upon the sea, as well as upon the dry land, certain properties can be established. But as to the right of passage, it may be common to everybody, without injury to any. It remains to be examined how all these points may be regulated for the common utility.

The maritime code touches the political code, in consequence of the powers granted to naval officers, admirals, captains, &c.

A ship is a little wandering province, like the island of Laputa. Some vessels of war contain more citizens than there are in the republic of Saint Martin.

Hitherto the distinction between maritime and terrestrial law, if we may use the term, has not appeared to rest upon solid foundations. Still it is desirable, because of the particular circumstances in which sailors are placed, that they should have a separate code, distinct laws, for themselves. It is a means of simplifying the general code.

Vessels are liable to injure one another. This is only a particular case of damage, in which there may be, as in every other evil intention, a smaller or greater degree of fault, or pure accident. Particular regulations may be made upon these points, and placed in the maritime code; or in treating of damage in the general penal code, the most common events with reference to ships may be included there.

The police of ports would find its most natural place in this code.

CHAPTER XXV.

PLAN OF THE MILITARY CODE.

THE functions of the military are like those of justice and police. Sometimes they are employed in the prevention of evil — sometimes in punishing it; sometimes the two objects are united.

In former times, military law had greater connexion with the civil, than it has at present. It was thus under the feudal system. Landed property was given instead of salary: engagements to perform military service were the principal means of acquiring land; the non-rendering of these services was the principal means of losing it. Every baron exercised almost unlimited power over his unhappy vassals: all rights floated in uncertainty. In these times of anarchy, what ought we to call each powerful chief? Was he a sovereign, or a subject? — a robber, or a soldier? — a magistrate, or a tyrant? As to the multitude, their condition was too clearly decided: it was a condition of the harshest slavery.

How free soever may be the constitution of a state, powers over the people, to be exercised upon certain occasions, must necessarily be given to the defenders of such country, that they may be able to protect it. These powers, always objects of suspicion, are much more so when undefined. The first object should be to shut them up into the narrowest limits; the next, to mark out

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these limits with the greatest clearness; and if on certain occasions they must necessarily be unlimited, it is better to announce this in the law, than to preserve a timid silence: — the occasion itself, which gives rise to this power, may then serve as its limits, if there be no other. The dictatorship of the Romans is an instance of this kind. The same procedures, which when authorised by the laws produce no sensation, would appear the height of tyranny if they were arbitrary. In the first case they would have a limit, and the honour of the laws would remain untouched: in the second, no one would be able to see where they would end, and the authority of the laws would be trampled under foot; since in a complete system, every power which was not derived from the laws, would be an infraction of the laws. *Those that are not with me, are against me.*

Take an example: — Care has been taken to provide for the maintenance of the troops by general arrangements, in such manner as not to hurt individuals. But it may happen, from a thousand unforeseen accidents, that a certain body of troops, large or small, is in want of necessaries, especially in time of war. But what would the law say to them? They would not allow themselves to die of hunger, with arms in their hands, if it were possible to procure food. It is better courageously to provide for this emergency, and to give to the lowest serjeant the right of making suitable requisitions, than to be silent from fear, and to leave everything to chance and to violence. Let there be no refined formalities; freely concede a power that may be seized in despite of the laws, reserving to yourself the power of ascertaining the facts, for the purpose of punishing its abuse, and indemnifying the parties injured.

Act in the same manner with regard to the extraordinary powers which it may be necessary to grant to commanders for the defence either of towns or countries. To carry off provisions—to break down bridges—to cut down trees — to burn houses — to inundate the country, — all these extremities may become necessary, and they will be neither more nor less so from having been authentically provided for. If there be not a clear and precise permission—sometimes, out of vexation, the strict line of necessity will be surpassed, to the detriment of individuals; sometimes, from fear, only half measures will be taken, to the peril of the public welfare.

Such are the points by which the military code is connected with the penal and civil code. It will be clearly perceived, that it has a continual connexion with the international code. It would be proper to place these relations in the clearest light by a train of reciprocal references.

With reference to military operations, they may be considered as the execution of a law, — as a species of process against the foreign disturbers of the state. As ordinary procedure has its principal and accessory ends, so military procedure has its own: — the principal end is to overcome the enemy; the accessory end is not to oppress the citizen. In relation to the first, to indicate the means to be employed would be to make a treatise upon the art of war, a labour not required here. Still, however, if on the side of ideas it belongs to soldiers by profession, on the side of method and style it belongs to the ordinary legislature; whilst as to the means of attaining the accessory end, the most efficacious are, to grant a great latitude of powers, upon verifying all the facts, and rendering the chiefs responsible.

CHAPTER XXVI.

PLAN OF THE ECCLESIASTICAL CODE.

THE subjects of the ecclesiastical code may have reference, partly to the penal and partly to the civil codes — partly to the constitutional, and partly to the international codes.

We have seen, in the catalogue of offences, an order composed of those offences whose tendency is to abuse the motive of religion, or to weaken its power in the cases in which it is employed in the service of the state.— Thus far it is penal.

In the greater number of religions there is established a class of men whose condition consists in cultivating and directing the influence of this motive in the minds of the other citizens. The persons clothed with this condition sometimes hold, instead of salaries, certain lands, which for the accomplishment of the designs of the donors are subjected to other rules than those affecting the lands of other citizens. It is by such circumstances that the ecclesiastical code is connected with the civil code.

Almost everywhere there is annexed to this condition certain political powers, either over the body of the people, or over the members of the same fraternity. Here is a connexion with constitutional law

The principles which ought to regulate their salaries are the same as those which ought to regulate those of all other services in the state. This belongs to remuneratory law.

In granting to this class certain rights and powers — in subjecting them to certain obligations, they have also been subjected to certain incapacities. These incapacities are sometimes civil, as interdiction of marriage; sometimes political, as exclusion from certain military, public, or judicial employments.

It may happen that the ecclesiastical class in a country has a foreign head, and that the

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political sovereign allows this foreign chief to exercise his powers in matters of religion. It may be, that these powers exercised by foreigners may be in the hand of a pope, or of an assembly, as of councils, &c. &c. Here there is a connexion with the code of international law.

In this code, the principles which ought to guide the legislator are few in number; and are — as respects penal law, *toleration* in respect of political rights — *submission* in regard to the sovereign — *equality* in regard to their fellow-citizens, and if it be possible, among themselves — as respects their salaries, *economy*.

CHAPTER XXVII.

PLAN OF REMUNERATORY LAWS.

THE system of these laws could not have any plan which should belong to itself alone. Remuneratory laws will be found dispersed here and there throughout the penal code, without having any regular correspondence with offences; since it is not possible to apply a reward to every law, as one applies a punishment. Pleasure, in as far as it is at the disposal of the legislator, is a motive whose force is too precarious, and the quantity of it too small to allow of its being depended upon, in reference to objects of the first necessity. It is a useful auxiliary; but the service of the laws requires a regular and permanent force, such as can only be found in punishments Reward can scarcely be employed except for the production of extraordinary services — works of supererogation.

Sometimes a principal law has for its support two subsidiary laws of opposite natures: the one penal, in case of disobedience; the other remuneratory, in case of obedience. Thus a wise law, by directing every individual who becomes acquainted with a crime to denounce it to the magistrate, threatens a punishment against him who conceals it, and proposes a reward for him who denounces it. Sometimes the reward is placed in front, and the punishment is, so to speak, placed behind to support it. Thus when it is desired that certain burthensome offices should be discharged, a salary is attached to them, to induce persons to undertake them with good will; but if this method fail, it is necessary to use constraint. In enlisting soldiers and sailors, it is usual to begin by offering bounties, and to finish by ballot and impressment.

The laws which adopt, which guarantee contracts and dispositions of goods between individuals, are a species of remuneratory laws, in the cases in which these contracts, these dispositions, have for their objects, services rendered, or to be rendered. Remuneratory laws belong under this aspect to the civil code.

The most extended field for the remuneratory system is political economy — public instruction might also make great use of it. Those methods which elevate the soul, and give to the mind the elasticity of pleasure, are preferable in the treatment of youth to those which sadden it, and accustom it only to act from fear.

Rewards are sometimes distributed in virtue of general and permanent laws, sometimes according to the good pleasure of those who direct the public funds. A reward granted without having been promised, exactly resembles in form the penal law which would be called *ex post facto* — I say as to the form, for all the world sees at once that a penal law passed after the act is a revolting injustice. A reward in the same case is precisely the opposite. Is it well applied? It is so much rather an act of wisdom on the part of the government, that it resembles a general invitation addressed to all persons to direct their services to all objects of utility, without fear that in case of success they will lose their labour.

CHAPTER XXVIII.

OF POLITICAL ECONOMY.

THE distinction marked by the word economy is applicable rather to a branch of the science of legislation, than to a division in a code of laws. It is much easier to say what branch of this science should be called political economy, than to say what laws are economical.

The most powerful means of augmenting national wealth are those which maintain the security of properties, and which gently favour their equalization. Such are the objects of civil and penal law. Those arrangements which tend to increase the national wealth by other means than security and equality (if there be any such,) may be considered as belonging to the class of economical laws.

It may be said, there is a science distinct from every other, which is called *political* economy: the mind can abstractly consider everything which concerns the wealth of nations, and form a general theory concerning it: but I do not see that there can exist a code of laws concerning political economy, distinct and separate from all the other codes. The collection of laws upon this subject would only be a mass of imperfect shreds, drawn without distinction from the whole body of laws.

Political economy, for example, has reference to the penal laws, which create the species of offences which have been called *offences against population*, and *offences against the national wealth*.

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Political economy would be found connected with the international code by treaties of commerce, and with the financial code by the taxes, and their effects upon the public wealth.

CHAPTER XXIX.

PLAN OF THE FINANCIAL CODE.

THE matter of this code will coincide partly with the civil, partly with the penal, partly with the constitutional, and partly with the international codes.

The regulations to which property and trade are subjected on account of taxes, belong to the civil code. In as far as regards the duties of the contributors, the financial coincides with the penal code, and with that species of offence which is called non-payment of taxes. In relation to the rights and duties of the officers set apart for this branch of administration, the financial is connected with the constitutional code, and sometimes with the international code.

The receipt of taxes bears the same relation to their assessment as procedure bears to substantive law. The one answers to *why* — the other to how much. Finance has its indirect, as well as its direct laws. These consist in simply saying, "Pay such a tax on such an occasion." The indirect consist of those precautions which are taken to prevent individuals from withdrawing themselves from the payment of taxes. If fiscal laws are generally very complicated, it is because they are generally directed against accessory offences.

With respect to the principles which ought to regulate taxes, they form part of the science of political economy. A treatise upon finance ought to begin with two tables: — A table of all the inconveniences which can possibly result from every kind of tax; 2. A table of all the taxes, arranged in the most convenient order for facilitating the comparison and showing the particular qualities of each one.

First object of finance — to find the money without constraint — without making any person experience the pain of loss and of privation.*

Second object — to take care that this pain of constraint and privation be reduced to the lowest term.

Third object — to avoid giving rise to evils accessory to the obligation of paying the tax.

One essential object in a treatise of finance would be to simplify the language — to banish false metaphorical and obscure expressions — to restore everything to clearness and truth. Few persons know how much technical terms have contributed to conceal errors, to mask quackery, to confine the science to a small number of adepts who have made of it a species of monopoly. The knowledge of this jargon has become a cabalistic sign, by which the initiated recognise each other; and the obscurities of the language have enabled financiers to deceive the simple up to a certain point, with regard to transactions which would otherwise have been at once recognised as nefarious; — a *theft*, for example, is called a *retaining*. These artifices of style have their place in other matters: it is thought better to say of a minister, that he has been thanked than dismissed. But in a treatise upon the principles of legislation, the right word ought to be employed — the word which correctly expresses the real fact without concealment.

How numerous are the questions which appear difficult to be resolved, and even insolvable, because terms are employed which have no meaning, or which only present incorrect ideas!

CHAPTER XXX.

PLAN OF PROCEDURE CODE.

IN arranging matters of procedure, it is necessary to regard four principles: — 1. The order of the *offences* which it is intended to combat, or of rights not enjoyed, which it is intended to cause to be enjoyed. 2. The order of *the ends* which can be proposed in combating the ill effects of each offence. 3. The chronological order of the steps which may be taken on the one side or on the other, in the pursuit of these ends. 4. The power to be exercised provisionally for securing the *justiciability* of the accused.

We commence, then, by the system of procedure which is suitable to every offence.

To arrest, to indemnify, to prevent; — these three objects of the legislator give rise to three distinct branches: — procedure *ad compescendum*,† *ad compensandum*, *ad præveniendum*. These three branches are not required with regard to every offence, because they may all be secured by seeking them together.

With respect to precautions for submitting

* This object can rarely be accomplished. The Canton of Berne levies no taxes: its government is supported by its property. It is almost a unique case, and perhaps it is not desirable that it should be general. In governments in which the people have no part, the necessity of attending to the solvability of the contributors is a species of safeguard for them.

† The famous English law of *habeas corpus* is an example of procedure *ad compescendum*, with regard to offences directed against the person. What renders it famous is, that the ministers, who act by order of the king, are subject to it as well as others. It allows of no arbitrary imprisonment. The action *ad exhibendum* of the code Frédéric produces a similar effect with regard to things.

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the party to justice, there are two things to be done—to secure the person of the accused, or his goods — or to admit him to give bail. The necessity of these precautions is determined by the intensity of the punishment. The punishment attached to the offence of which an individual is accused, may be such, that he would choose rather to indemnify his sureties, or to leave them to suffer in his stead, than to expose himself to it. In this case, we can possess no other security than that of his person. But if it can be presumed, either from his property or from other motives determining his residence, that he would submit to the judgment which may be pronounced against him, rather than escape it by flight, imprisonment would be a useless rigour. It is not so much the nature of the offence, as the responsibility of the accused, which ought to determine these precautions. A poor man, and especially a stranger, ought to be arrested, when there would be no necessity for arresting a rich man or a housekeeper. Not that the stranger ought to be more ill treated than the resident inhabitant, or the poor than the rich; but because the circumstances of the one offer a guarantee which the circumstances of the other do not yield. Necessity alone can authorize the slightest degree of constraint.

The distinction between *criminal procedure*, *slightly criminal*, and *civil*, may be preserved, or they may be exchanged for other terms: — procedure of rigour—procedure of less rigour — procedure without rigour.

The code of procedure will be much shortened, by distributing it into general and particular titles.

All offences with regard to which the same procedure may be pursued, ought to be placed together, and designated by a common title.

Penal suits have direct reference to offences. Suits of *demand*, commonly called *civil* suits, have direct reference to rights, and indirect reference to offences.

Care should also be taken to prepare formulas for all cases which are susceptible of them; that is to say, for everything which in the course of the trial may be done by a general rule.

CHAPTER XXXI.

OF THE INTEGRALITY OF THE CODE OF LAWS.

It is not sufficient that a code of laws has been well digested withregard to its extent; it ought also to be complete. For the attainment of this object, it is necessary at once to embrace the whole of legislation — and this principal object has never yet been attempted. I have ventured to undertake it, and I have, so to speak, *projected the sphere of the laws*, that all its parts may be seen at one view.

The collection of the laws made upon this plan would be vast, but this is no reason for omitting anything. Whether a law be written or unwritten, it is not less necessary that it should be known. To shut one's eyes to the mass of the burthen we are obliged to bear, is not a means of lightening its weight. Besides, what part ought to be excluded? To what obligation ought the citizens to be subjected without their knowledge? The laws are a snare for those who are ignorant of them. This ignorance would be one of the greatest crimes of governments, if it were not the effect of their incapacity and unfitness. Caligula suspended the table of his laws upon lofty columns, that he might render the knowledge of them difficult. How numerous are the countries in which these matters are still worse! The laws are not even upon tables; — they are not even written. That is done from indolence, which the Roman emperor did from tyranny.

A complete digest: such is the first rule. Whatever is not in the code of laws, ought not to be law. Nothing ought to be referred either to custom, or to foreign law, or to pretended natural law, or to pretended laws of nations. Does the legislator who adopts, for example, the Roman law, know what he does? Can he know it? Is it not a field of eternal disputes? Is it not, in one word, to render arbitrary everything which he pretends to take from it? Is not this amalgamation sufficient to corrupt the whole code? When we add together two quantities, the one finite and the other infinite, that the sum will be infinite is a mathematical axiom.

I do not say, that if among the states of a sovereign he find a province, a town, which has its customs, its unwritten laws, to the preservation of which he finds himself bound either by convention or custom, he ought to abolish them. No, without doubt: but taking the necessary precautions, he may confirm them, fix them by writing. It was thus that Charles V. acted with regard to Hainault.

It is objected to the forming a code of laws, that it is not possible to foresee every case which can happen. I acknowledge that it is not possible to foresee them individually, but they may be foreseen in their species; for example, a person may be assured that every species of offence are comprised in the tables which this work includes, although he may not be assured that every possible individual offence has been foreseen.

With a good method, we go before events, instead of following them; we govern them, instead of being their sport. A narrow-minded and timid legislature waits till particular evils have arisen, before it prepares a remedy; an enlightened legislature foresees and prevents them by general precautions. Civil and penal laws were necessarily at first

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made by groping about, according as circumstances required them. In this manner the breaches were filled up with the body of their victims. But this procedure of the ages of barbarism ought not to be followed in the age of civilization.

Of all the codes which legislators have considered as complete, there is not one which is so. The Danish is the most ancient code; it is dated 1683: the Swedish code is dated 1734; the code Frédéric, 1751; the Sardinian, 1770.

In the preface to the Danish code, it is expressly stated to be complete. However, it contains nothing about taxes, no regulations relating to professions, nothing about the succession to the crown, nothing about the powers of any subaltern officers, except those of justice; nothing respecting international law; no formularies, either for contracts, or the disposal of goods, or for different stages of procedure. It is, however, the least incomplete of all the codes.

In the Swedish code, all those parts are wanting which are wanting in the Danish code; it also wants the section on political or constitutional law.

The code Frédéric, stated in its title-page to be universal, is absolutely limited to civil law. It acknowledges that it is far from complete, for it speaks of feudal law, that it proposes afterwards to digest — of a part of the canon law, on which it does not touch — of many statutes of towns and provinces, which it reserves for examination, &c.

The Sardinian code recognises the Roman law as its foundation, and frequently refers to it under the name of common law. It could not more effectually have plunged everything into uncertainty.

I say nothing of the methods followed in these codes. Legislative science was too little advanced to furnish them with models of arrangement and distribution.

The object of these observations is not to depreciate the presents that these sovereigns made to their people. He who has been least successful in the composition of a code, has conferred an immense benefit. In digesting the body of laws, they have, at least in a great measure, caused the repetitions and contradictions of the laws to disappear. They have delivered their people from unwritten law — law which is uncertain in its essence — law without beginning and without end — law by which animals are governed, and which is disgraceful to men.

Written law is alone deserving of the name of law: unwritten law is, properly speaking, conjectural law. Written law has a certain manifest foundation. There is a legislator — there is a will — there is an expression of that will, a known period of its birth. Unwritten law possesses none of those qualities: its origin is unknown; it goes on continually increasing — it can never be finished; it is continually altering, without observation. If there be a lawgiver, it is the judge himself — a legislator, each one of whose laws is only applicable to a particular case, and always necessarily *ex post facto* — a legislator, the promulgation of whose laws is only made by the ruin of the individuals to whom they refer.

The grand utility of the law is certainty: unwritten law does not — it cannot — possess this quality; the citizen can find no part of it, cannot take it for his guide; he is reduced to consultations — he assembles the lawyers — he collects as many opinions as his fortune will permit; and all this ruinous procedure often serves only to create new doubts.

Nothing but the greatest integrity in a tribunal can prevent the judges from making an unwritten law a continual instrument of favour and corruption.

But wherever it exists, lawyers will be its defenders, and, perhaps innocently, its admirers. They love the source of their power, of their reputation, of their fortune: they love unwritten law for the same reason that the Egyptian priest loved hieroglyphics, for the same reason that the priests of all religions have loved their peculiar dogmas and mysteries.

CHAPTER XXXII.

OF PURITY IN THE COMPOSITION OF A CODE OF LAWS.

By purity in a composition of a code of laws, I mean the absence of all heterogenous matter, of all foreign mixture of everything which is not law — of everything which is not the pure and simple expression of the will of the legislator. Laws made for all times ought to be above all little passions: they ought to command and instruct — they ought not to descend from their elevation to dispute with individuals. *Leges non decet esse disputantes*, says Bacon: *sed jubentes*, he ought to have added, *et docentes*.

I see with regret the compiler* of the code of a great nation incessantly occupied in triumphing over the lawyers: the royal sceptre committed to his hands is used as an instrument of combat. Such formulas as the following are continually found: — "It has been questioned" — "Some lawyers have pretended" — "Some have denied" — "Others have affirmed, but we will and direct" — "We abolish by these presents, these distinctions altogether destitute of foundation," &c. &c.

Men, things, opinions, ought all to be considered on the great scale. Conciliation should be the object of the legislator, and not triumph. He should rise above all ephemeral strife.

* Cocceius' Code Frederic.

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Another form not less vicious, is that of enveloping the will of the legislator in a foreign will. In the same code, such expressions as these are frequently found: — "The civil laws declare"—"The laws exclude"—"The laws have granted." What laws are referred to? Who made them? Besides, is not this anterior law — this natural law to which we are referred, and which is made the foundation of the law — is it not a source of obscurity? — is it not a veil which intercepts the will of the real legislator?

The compilers of the Justinian code have given examples of these faults. Instead of making the legislator say *I will*, they make him every moment say, *It appears to me*. The emperor so completely forgets his dignity as to say, "*It is thus that Titius or Sempronius* think." He forgets it still more, when he remains in suspense between two opposite authorities: "It is thus that Titius thinks, but Sempronius thinks otherwise."

Historical disquisitions ought not to have place in the general collection of the laws. It is not necessary to cite what the Romans did. If what they did was good, do like them, but do not talk of them.

The great utility of a code of laws is to cause both the debates of lawyers and the bad laws of former times to be forgotten.

CHAPTER XXXIII.

OF THE STYLE OF THE LAWS.

THE perfections of which the style of the laws are capable, may be distinguished into those which are essential, and those which are secondary.

The first consist in avoiding the different faults of which this style is susceptible; the second in employing those beauties which are suitable to the subject.

The desirable object of the laws in regard to style is, that it may be such that at every moment in which they ought to influence the conduct of a citizen, he may have presented to his mind an exact idea of the will of the legislator in this respect.

For the accomplishment of this object two things are requisite: — 1. That at the moment in question, the idea should already have been placed in his mind; 2. That it shall not have escaped from it.

This idea will not have been correctly placed in the mind — 1. When the words employed do not convey any idea; 2. When they present only part of the idea intended to be conveyed; 3. When instead of this idea they present another altogether different; 4. When they include other propositions in conjunction with that intended by the legislator.

Hence we discover that clearness, precision, is one of the essential qualities of this style.

As it is also to be wished that the idea, once correctly placed in the mind, should remain there always ready for use, and as men differ in regard to the strength of their memories, and the more any one endeavours to load his memory, the more he is likely to forget, we have learned that another important quality in this style is *brevity*.

> Quicquid præcipies esto brevis: ut cito dicta
> Percipiant animi dociles, teneantque fideles.
> *De Arte Poet.* 334-5.

Such was the precept of Horace eighteen centuries ago: but hitherto in respect to England, his precept has been delivered in vain.

Defects of style may be referred to four heads: — unintelligibility — equivocality — too great extent — too great limitation.

As an example, I may employ a law cited by Puffendorf, promulgated in a country in which assassination had become common: — "Whosoever draws blood in the streets shall be put to death." A surgeon found a man faint, and bled him in the street. This circumstance showed the necessity of interpretation; that is, it displayed one of the defects of the law.

This enactment was defective by excess, and by defect: — by excess, in that it admitted of no exception with regard to those cases in which the drawing of blood in the streets might be either useful or innocent; by defect, in that it did not extend to murder, and other methods of wounding not less dangerous than those by which blood is spilled.

If it were the intention of the legislator to comprehend in his prohibition all kinds of grievous injuries which could be committed in public places, he did not know how to express himself clearly.

A judge confining himself to the text of the law, would punish with death slight accidents, and even acts of mercy.

Another judge equally faithful to the text, would leave unpunished more hurtful acts of violence, than those which shed blood.

The law which presents different significations to a judge, cannot fail to be wanting in precision and clearness to individuals.

One will find a man struck by apoplexy, and will prudently leave him to die.

Another, listening to the voice of humanity, will violate the law, and succour the sick man, and thus expose himself to be condemned by the inflexible judge.

Another, trusting in the literal sense of the law, will leave his adversary half dead with his blows; in the manner of that archbishop, who that he might not shed blood, made use of a mace.

It is to be wished, that those minds which consider it beneath the dignity of genius, scrupulously to attend to the care of words, would reflect upon this example. As are the words, such is the law. Laws can only be

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made with words. Life, liberty, property, honour — everything which is dear to us, depends upon the choice of words.

In all cases of want of precision, the fault arises either from the choice made of the words, or from the manner in which they are put together; that is to say, either from the terminology or from the syntax. In either case it is an affair of grammar, and we may remark, that besides being enlightened, it behoves the legislator either to be or to employ a consummate grammarian.

With regard to brevity, a distinction is necessary. A code of laws prepared upon the best plan, and reduced to the smallest dimensions, will always be too large to be committed to the memory entire; hence the necessity of separating into distinct codes, those parts which are intended for the use of particular classes, who have need to be more particularly acquainted with one part of the laws than another.

Brevity of style may regard sentences and paragraphs, as well as the whole body of the laws.

Lengthiness is particularly vicious when it is found in connexion with the expression of the will of the legislator.

The faults opposed to brevity which may be found in a paragraph are —

1. Repetition in terms.

2. Virtual repetition or tautology: as for example, when the king of France is made to say, "*We will, we direct, and it pleases us.*"

3. Repetition of specific words instead of the generic term.

4. Repetition of the definition, instead of the proper term, which ought to be defined once for all.

5. The development of phrases, instead of employing the usual ellipses: for example, when mention is made of the two sexes, in cases in which the masculine would have marked them both; cases in which the singular and plural are both used, when one of the two numbers would have been sufficient.

6. Useless details: for example, in regard to time, when instead of confining one's self to the event which would serve for this effect, it has been made dependent on some anterior event or train of events.

It is by the collection of all these defects that the English statutes have acquired their unbearable prolixity, and that the English law is smothered amidst a redundancy of words.

It is not enough that the whole of a paragraph is concise in regard to the number of ideas that it presents: the sentences in which they are presented should have this same quality. This circumstance is equally of importance whether it concerns the understanding or the retaining the sense of a paragraph: the shorter the distance between the beginning and the ending of each sentence, the more numerous the points of repose for the mind. In the English statutes, sentences may be found which would make a small volume. Pitching blocks are erected in certain places in the streets of London, for porters with their loads: when will English legislators take equal care for the relief of the minds of those who study their labours.

It is not only desirable that the paragraphs be short: they ought to be numbered. Some means is necessary for separating and distinguishing them: that of numbering is the most simple, the least liable to mistake, the most easy for citation and reference.

The British Acts of Parliament are still defective in this respect. The division into sections, and the numbers which designate them in the current editions, are not authentic. In the original parliamentary roll, the text of the law is one single piece, without distinction of paragraph, without punctuation, without a figure. By what means is the commencement and the termination of an article shown? It is only by the repetition of the introductory clauses: — "And further be it enacted." "And it is further enacted by the authority aforesaid," or some other phrase of the same kind. These are, so to speak, a species of algebraic notation, but of an opposite character. In algebra, one letter supplies the place of a multitude of words and figures; here, a line of words very imperfectly supplies the place of a single figure. I say imperfectly, for though these words may serve for the purpose of division, they do not serve for the purpose of reference. Is it wished to amend or revoke one article in an act? As it is impossible to designate this article by a numerical reference, it is necessary to employ periphrasis and repetitions, always long, and always obscure. Hence English acts of parliament are compositions unintelligible to those who have not by long use acquired facility in consulting them.

This evil has arisen from a superstitious attachment to ancient customs. The first acts of Parliament were passed at a time when punctuation was not in use — when the Arabic figures were unknown. Besides, the statutes, in their state of original simplicity and imperfection, were so short and so few, that the want of division did not produce sensible inconvenience. Things have remained upon the same footing from negligence, from habit, or from secret and interested opposition to all reform. We have lived for ages without using stops and figures: why adopt them today? This argument is above all reply.

With regard to perfections of the second order, they may be reduced to three — *force*, *harmony*, and *nobleness*. Force and harmony depend in part upon the mechanical qualities of the words employed — in part upon the manner in which they are arranged. Noble-

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ness depends principally upon the accessory ideas which they are calculated to excite or to avoid.

Barren though the subjects of the laws may be, they are susceptible of a species of eloquence which belongs to them, and of which the utility ought not to be despised, as it tends to conciliate the popular sanction. With this view, the legislator might sprinkle here and there moral sentences, provided they were very short, and in accordance with the subject; and he would not do ill if he were to allow marks of his paternal tenderness to flow down upon his paper, as proofs of the benevolence which guides his pen. Why should the legislator be ashamed to appear as a father? Why should he not show that even his severities themselves are benefits? This species of beauty has been remarked with pleasure in the political code, as well as in the instructions of Catherine II. It was also exhibited in the preambles to certain edicts of Louis XVI., under the ministry of two men who did honour to France and to humanity.

Having made these general observations, the following rules may be given as practical directions: —

1. It is proper, as much as possible, not to put into a code of laws any other legal terms than such as are familiar to the people.

2. If it be necessary to employ technical terms, care ought to be taken to define them in the body of the laws themselves.

3. The terms of such definitions ought to be common and known words; or at least, the chain of definitions, more or less known, ought always to finish by a link formed of such words.

4. The same ideas, the same words. Never employ other than a single and the same word, for expressing a single and the same idea. It is, in the first place, a means of abridgment, because the explanation of the term once given, will serve for all times: and the identity of the words contributes still more to clearness than to brevity; for if they vary, it is always a problem to be solved, whether it have been intended to express the same ideas, whereas, when the same words are employed, there can be no doubt but that the meaning is the same. Those who are lavish of their words, know little of the danger of mistakes, and that, in matters of legislation, they cannot be too scrupulous. The words of the laws ought to be weighed like diamonds.

The composition of a code of laws will have required so much the more knowledge, in proportion as it shall demand less knowledge to comprehend it. In works of art, the perfection of art consists in its concealment: in a code of laws addressed to the people, and to the least intelligent portion of the people, the perfection of science will be attained, when its efforts are not perceived, and its results are characterized by noble simplicity.

If in the foregoing work science have been found, and even theory and abstract science, it ought to be remembered that it has been necessary to combat a multitude of errors created by false science — to establish principles so ancient and so new, that to some eyes they will not appear to be discoveries, whilst to others they will appear altogether paradoxical. It has been necessary to introduce order into the chaos of nomenclature with respect to rights, offences, contracts, obligations — to substitute in the place of an incoherent and confused jargon, a language very imperfect, but still more clear, more correct, and more conformable to analogy: in a word, as respects the scientific part of the law, it has been necessary to unlearn and to reconstruct the whole. No one can be more disgusted than myself at the abuse of science — no one can be more sensible of the ill effects it produces. If I have not attained my object, I believe that I have shown the way to it.

If comparison should be made between my labours and the books of actual law, these will be found bristling with a certain science as repulsive as it is inexact and useless, and which owes its obscurity to its own absurdity — whilst by how much the more this project has abounded in science, by so much the less will it be necessary that any should appear in the text of the laws. I have endeavoured to throw the burthen upon the legislator, that the yoke may be lightened for the people. I have given the labour to the strong, that the repose of the weak may be better secured.

A code formed upon these principles would not require schools for its explanation, would not require casuists to unravel its subtilties. It would speak a language familiar to everybody: each one might consult it at his need. It would be distinguished from all other books by its greater simplicity and clearness. The father of a family, without assistance, might take it in his hand and teach it to his children, and give to the precepts of private morality the force and dignity of public morals.

CHAPTER XXXIV.

OF THE INTERPRETATION, CONSERVATION, AND IMPROVEMENT OF A CODE.

THE code of laws having been thus prepared, it will be desirable to preserve it from the injuries to which it is liable, both as to its matter and as to its form.

For this purpose it will be necessary to forbid the introduction of all unwritten law. It will not be sufficient to cut off the head of the hydra: the wound must be cauterized,

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that new heads may not be produced. If a new case occur, not provided for by the code, the judge may point it out, and indicate the remedy: but no decision of any judge, much less the opinion of any individual, should be allowed to be cited as law, until such decision or opinion have been embodied by the legislator in the code.

It should be directed that the text of the law should be the standard of the law. In judging whether a given case fall within the law, the text ought to be kept principally in view; the examples which may be given being designed only to *explain*, not to *restrain*, the purport of the law.

If any commentary should be written on this code, with a view of pointing out what is the sense thereof, all men should be required to pay no regard to such comment: neither should it be allowed to be cited in any court of justice in any manner whatsoever, neither by express words, nor by any circuitous designation.

But if any judge or advocate should, in the course of his practice, see occasion to remark anything in it that appears to him erroneous in point of matter, or in point of style defective, redundant, or obscure, let him certify such observation to the legislature, with the reasons of his opinion, and the correction he would propose.

If there should be any particular provision that appears at first sight to be repugnant to one more general, they should, if possible, be reconciled: if not, let the particular provision prevail over the general. For this reason, — the particular provision is established upon a nearer and more exact view of the subject than the general, of which it may be regarded as a correction. But if such a case should ever happen, it is a blemish in the law itself, and ought to be corrected; and when observed by a judge, should be represented to the legislature.

Whatsoever the legislator had in view and intended to express, but failed to express, either through haste or inaccuracy of language, so much it belongs to the judges in the way of interpretation to supply.

When, however, a passage appears to be obscure, let it be cleared up rather by alteration than by comment. Retrench, add, substitute as much as you will — but never explain: by the latter, certainty will generally, — perspicuity and brevity will always, suffer. The more words there are, the more words are there about which doubts may be entertained.

Finally, once in a hundred years, let the laws be revised for the sake of changing such terms and expressions as by that time may have become obsolete—remembering that this will be more needful in regard to the language of the legal formularies in use, than that of the text of the laws themselves.

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PANNOMIAL FRAGMENTS.

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CHAPTER I.

GENERAL OBSERVATIONS.

By a Pannomion, understand on this occasion an all-comprehensive collection of law,—that is to say, of *rules* expressive of the will or wills of some person or persons belonging to the community, or say society in question, with whose will in so far as known, or guessed at, all other members of that same community in question, whether from habit or otherwise, are regarded as disposed to act in compliance.

In the formation of such a work, the sole proper all-comprehensive end should be the greatest happiness of the whole community, governors and governed together,—the *greatest-happiness principle* should be the fundamental principle.

The next specific principle is the *happiness-numeration principle.*

Rule: In case of collision and contest, happiness of each party being equal, prefer the happiness of the greater to that of the lesser number.

Maximizing universal security; — securing the existence of, and sufficiency of, the matter of subsistence for all the members of the community; — maximizing the quantity of the matter of abundance in all its shapes; — securing the nearest approximation to absolute equality in the distribution of the matter of abundance, and the other modifications of the matter of property; that is to say, the nearest approximation consistent with universal security, as above, for subsistence and maximization of the matter of abundance: — by these denominations, or for shortness, by the several words *security, subsistence, abundance,* and *equality,* may be characterized the several specific ends, which in the character of means stand next in subordination to the all embracing end — the greatest happiness of the greatest number of the individuals belonging to the community in question.

The following are the branches of the pannomion, to which the ends immediately subordinate to the greatest-happiness principle respectively correspond: —

To constitutional law, the axioms and principles applying to equality.

To penal law, the axioms and principles applying to security; viz. as to — 1. Person; 2. Reputation; 3. Property; 4. Condition in life.

The principle presiding over that branch of the *penal code,* which is employed in the endeavour to arrest, or apply remedy to offences

* The MSS. from which the following Chapters are extracted, were written at sundry times, and are in an unfinished state; — the author appears to have designed ultimately to have worked up the sketches he has thus left into an Introduction to a Pannomion, or Complete Code of Laws. Some of the latest sheets are dated June 1831.

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considered as being and being intended to be productive of suffering to one party, without producing enjoyment, otherwise than from the contemplation of such suffering, to the other, is *the positive-pain-preventing principle.*

Rule: Let not any one produce pain on the part of any other, for no other purpose than the pleasure derived from the contemplation of that same pain.

The persons for the regulation of whose conduct the *positive-pain-preventing principle* applies are —

1. The subject citizens, taken at large.

2. The sovereign, in respect of the quantity, and thence the quality of the subsequentially preventive, or say punitive, remedy applied by him against any offence.

To civil law, more particularly, apply the axioms relating to security as to property. Sole principle — *the disappointment-preventing principle.*

Rule applying to the aggregate, composed of the several sources of positive good or happiness, elements of prosperity, objects as they thus are of general desire: Among a number of persons, competitors actually or eventually possible, for the benefit or source of happiness in question, exceptions excepted, give it to that one in whose breast the greatest quantity of pain of disappointment will have place, in the event of his not having the thing thenceforward in his possession, or say, at his command.

The exception is when, by any different disposition, happiness in greater quantity, probability taken into account, will be produced.

Of any such exception the existence ought not to be assumed: if it exist, the proof of its existence lies upon him by whom its existence is asserted.

To political economy apply the axioms and principles relating to subsistence and abundance. To political economy — that is to say, to those portions of the penal and civil codes in the rationale of which considerations suggested by the art and science of political economy are applicable and have place: considerations over and above and independent of the sensations produced by loss and gain.

By axioms of moral and political pathology, understand so many general propositions, by each of which statement is made of the pleasure or pain (chiefly of the pain) produced by the several sorts of evils, which are the result of human agency on the part of the several individuals respectively affected by them; to wit, by means of the influence exercised by them on the quantity or degree in which the benefits expressed by the fore-mentioned all important words, are by the respective parties, agents and patients, enjoyed, or the opposite burthens constituted by the absence of them endured.

Of these propositions, it will be observed that they divide themselves into *groups*; — one group being relative to security, another to subsistence, a third to abundance, the fourth and last to equality: the first bringing to view the enjoyment derived from the undisturbed possession of security at large — security in the most comprehensive application made of the word, contrasted with the enjoyment producible by the breach of it, — the second group bringing to view the subject of subsistence; — the third group bringing to view the subject of abundance, — and the fourth group bringing to view the subject of equality, and stating the evil consequence of any legislative arrangement by which a defalcation from the maximum of practicable equality is effected.

In each of the axioms, the antagonizing, or say competing, interests of two parties are conjointly brought to view: — in those which relate to security, these parties are, the maleficent agent, or say wrongdoer, and the patient wronged: — in those which relate to subsistence, abundance, and equality, they are the parties whose interests stand in competition, no blame being supposed to have place on either side. By the legislator, preference should be given to that interest by preference to which the happiness of the greatest number will be most augmented.

To the first of the three stages of the progress made in society by the good or evil flowing from a human act, belong the effects of which indication is given in and announced by these same four groups of axioms.

The principles which form the groundwork of the here proposed system, correspond to the above-mentioned *specific* ends, immediately *subordinate* to the all-comprehensive *end*, expressed for shortness by the *greatest-happiness principle*, — and have their foundation in *observations* on the pathology of the human mind as expressed in the above-mentioned *propositions*, to which, in consideration of their supposed incontrovertibility and extensive applicability, have been given, for distinction sake, the name of axioms.

As to these principles, the names by which expression is given to them have for their object and purpose *conciseness* — the conveying, by means of these several compound substantives, a conception of the several groups of pathological effects in a manner more concise, and thence more commodious, than by a repetition made each time of the several groups of axioms to which they correspond, and which they are employed to recal to mind.

Correspondent to the axioms having reference to security, will be found the principles following: —

1. Principle correspondent to security, and the axioms thereto belonging, is the *security-providing principle.*

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Of the security-providing principle, the following modifications may be brought to view, corresponding to the several *objects* respecting which security requires to be afforded: —

I. The objects for, or say in respect of which, security is endeavoured, are these —

1. Person: the person of individuals on the occasion of which body and mind require to be distinguished.

2. Reputation: the reputation of individuals or classes, or say the degree of estimation in which they are respectively held.

3. Property: the masses of the matter of wealth respectively belonging to them, and possessed by them in the shape of capital, or in the shape of income.

4. Power: the portions of power respectively belonging to them, for whose sake soever, or say to whose benefit soever exerciseable, whether for the sake and benefit of the individual power-holder himself — or for the sake of other persons, one or more, in any number; in which case the power is styled a *trust*, and the power-holder a *trustee*, and the person or persons for whose benefit it is exercised, or designed to be exercised, entitled *benefitee*, and the person or persons by whom the trust was created a *trustor*.

5. Rank: or say factitious reputation or estimation, — the source of factitious reputation or estimation put into the possession of the individual by a series of delusions operating on the imagination.

6. Condition in life, in so far as beneficial: the aggregate benefits included in it will be found composed of the above objects, two or more of them.

N. B. The four last-mentioned objects may, for conciseness sake, be spoken of as so many modifications of the matter of prosperity.

7. Miscellaneous rights: including exemptions from burthensome obligations.

2. The maleficent acts, or say offences, against which the endeavour is used to apply the appropriate punitive and other remedies.

3. The contingently maleficent agents, against whose maleficent acts the endeavour will be used to employ the several remedial applications. These may be —

1. External, or say foreign governments and subjects, considered as liable to become adversaries. Code in which provision is made against evil from that source, the Constitutional. Ch. &c. Defensive Force — sub-departments of the administration department, those of the army and the navy ministers.

2. Internal; viz. fellow-citizens; as distinguished into — 1. Fellow-citizens at large, or say non-functionaries; 2. Functionaries considered in respect of the evil producible by them in such their several capacities.

4. The several classes of persons *to whom*, by the several arrangements employed, the security is endeavoured to be afforded. These may be distinguished into — (1.) Citizens of the state in question; distinguished into — 1. Persons considered in their individual capacities: correspondent offences — private offences. 2. Persons considered in classes: correspondent offences—semi-public offences. 3. Functionaries as such considered in the aggregate: correspondent offences — public offences, such as are purely public in contradistinction to such as are privato-public; offences affecting their individual capacity, but constituted public offences by the indefinable multitude of the individuals liable to be affected. (2.) Foreigners with reference to the state in question; — governments and subjects as above included.

A modification of the security-providing principle, applying to security in respect of all modifications of the matter of property, is the disappointment-preventing principle. The use of it is to convey intimation of the reason for whatever arrangements come to be made for affording security in respect of property and the other modifications of the matter of prosperity, considered with a view to the interest of the individual possessor. In the aggregate of these are contained all the security-requiring objects, as above, with the exception of *person*.

II. Subsistence-securing principle: correspondent subordinate end in view — subsistence. The use of it is to convey intimation of the reason for whatever arrangements come to be made for the purpose of securing, for the use of the community in question, a sufficient quantity of the matter of subsistence.

III. Abundance-maximizing principle: the use of it is to convey intimation of the reasons for whatever arrangements may come to be made in contemplation of their conduciveness to the accomplishment of that end.

IV. Equality-maximizing, or say, more properly, inequality-minimizing principle: the use of it is to convey intimation of the reasons for whatever arrangements come to be made, in contemplation of their conduciveness to this end.

CHAPTER II.

CONSIDERANDA.

SUBJECTS of consideration on the present occasion are the following: — Pleasures and pains—happiness and unhappiness—good and evil — ends and means — rules and principles — axioms of pathology, physical, and mental — or say psychological — observation and experiment. Of these, many are mutually correlative, — all are intimately connected with, and give and receive explanation to and from each other.

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Happiness is a word employed to denote the sum of the pleasures experienced during that quantity of time which is under consideration, deduction made or not made of the quantity of pain experienced during that same quantity of time.

Unhappiness is a word employed to denote the sum of pains experienced during the quantity of time which is under consideration, deduction made or not made of the quantity of pleasure experienced during that same quantity of time.

Good is a word employed to denote either pleasure, or exemption from pain — and the cause efficient, and more or less effective, of either.

Evil is a word employed to denote either pain or loss of pleasure, or a cause efficient, and more or less effective, of either.

In regard to good and evil, consider —

I. Their *condition* or import as to existence and non-existence.

Their *existential character*, or say character or mode of designation in regard to existence, or say logical character: — this is either *positive* or *negative*.

Positive good, is that which assumes not the existence of evil, and which accordingly might have place if there were no such thing as evil.

Negative good, is that which is constituted by the non-existence of evil on the occasion in question.

Positive evil, is that which assumes not the existence of good, and which accordingly might have place, if there were no such thing as good.

II. In regard to each, their *quality*.

By good, understand either pleasure, or the absence—or say, on the occasion in question, the non-existence — of *pain*. Pleasure is positive good; absence of pain — negative good.

By evil, understand either pain, or the absence — or say, on the occasion in question, the non-existence — of pleasure. Pain is positive evil; absence of pleasure—if arising from loss — negative evil.

III. Their relation in respect of causality.

Understand by *good*, either actual pleasure, or absence of pain, or anything considered as the cause of pleasure, or the absence of pain.

Understand by *evil*, either actual pain, or absence of pleasure, or anything considered as the cause of pain or of the absence of pleasure.

IV. Their quantity, in respect of — 1. Intensity; 2. Duration; 3. Extent.

V. Their productiveness — or say fecundity — 1. Direct; 2. Inverse.

VI. Part taken by human action in the production of them.

1. Wish, or say desire; 2. Direction to action in consequence—or say, in pursuance of such wish.

End is a word employed to denote a good, the prospect of eventually experiencing which, operates as a motive tending to produce at the hands of any sensitive being, some good which is an object of human desire and hope.

Means is a word employed to denote any substance, state of things, or matter, considered as contributing to the attainment of the good, which on that same occasion is regarded as an end.

Pleasures and exemptions from pains, with their respective correlatives, happiness and exemption from unhappiness, are the ultimate ends of action.

As between *good* and *evil*, good alone is an ultimate end of the action of a sensitive being.

Good and *evil*, both are means in their nature capable of being made conducive to the attainment of the ultimate end — the net maximum of happiness; and accordingly by men in general, and by men in the situation of legislators in particular, are employed in that view, and for that purpose.

Of good or evil, one and the same portion is capable of acting, on one and the same occasion, in the character of an *end*, and in that of a *means*: — of a means in relation to some antecedent end or state of things — of an end in relation to some eventually subsequent state of things.

Remedy, in all its shapes, is an instrument having for its use the exclusion of wrong in all its several shapes — or say, the exclusion of maleficence in all its several shapes.

Of remedy in every shape, the application made is attended with and productive of burthen.

The application of remedy, instead of excluding wrong, is productive of wrong, if and in so far as it is productive of burthen outweighing the benefit.

In this way may effects and causes be seen linked together, as it were, in a chain composed of links in indefinite number, and, taken in the aggregate, of correspondent length.

So much for the matter of good, being that the production of which is, or at least ought to be the object, or say end in view, of everything which passes under the denomination of law — or a law: — and so much for good and evil, — both of them employed as means, and the only means employable, for the attainment of that end.

But what is a law, and what are laws themselves? Before this is explained, must be brought to view that species of matter which on each occasion is occupied in passing judgment on the aptitude of the law in question, considered as a *means* employed in and for the attainment of that end. To this purpose comes the need of the ideas, expression to which is given by the two mutually

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and intimately connected words *rule* and *principle*.

Correspondent to every rule you may have a principle: correspondent to every principle you may have a rule.

Of these two, a rule is the object which requires first to be taken into consideration and presented to view. Why? Because it is only by means of a rule that any moving force can be applied to the active faculty, or any guide to the intellectual — any mandate can be issued — any instruction given.

A *rule* is a *proposition* — an entire proposition: a *principle* is but a *term*: True it is, that by a principle instruction may be conveyed. Conveyed? Yes: but how? No otherwise than through the medium of a proposition — the corresponding proposition — the proposition which it has the effect of presenting to the mind. Of presenting? Yes: and we may add, and of bringing back; for only in so far as the rule has been at the time in question, or some anterior time present to the mind, can any instruction, any clear idea be presented to the mind by a principle.

A principle, therefore, is as it were an abridgment of the corresponding rule; — in the compass of a single term, it serves to convey for some particular present use, to a mind already in possession of the rule, the essence of it: it is to the rule, what the essential oil is to the plant from which it is distilled.

So it does but answer this purpose, its uses are great and indisputable.

1. It saves words, and thereby time.

2. By consisting of nothing more than a single term, and that term a noun-substantive, it presents an object which, by an apt assortment of other words, is upon occasion capable of being made up into another proposition.

So, it is true, may a rule — but only in a form comparatively embarrassing and inconvenient. This will appear by taking in hand any sentence in which a principle has place, and instead of the principle employing the corresponding rule.

Upon occasion, into any one sentence principles in any number may be inserted: and the greater the number, the stronger will be the impression of the embarrassment saved by the substitution of the principles to the rules.

A principle, as above, is no more than a single term; but that term may as well be composite, a compound of two or more words, as single. Of these words one must be a noun-substantive; the other may be either a noun-adjective or a participle; including under the appellation of a noun-adjective, a noun-substantive employed in that character, in the mode which is so happily in use in the English language, and which gives it, in comparison with every language in which this mode is not in use, a most eminently and incontestably useful advantage.

By an *axiom* is meant a sort of rule, of which by certain properties, the combination of which is peculiar to it, the usefulness is pre-eminent in comparison with other rules. These properties are —

1. Incontestableness.
2. Comprehensiveness.
3. Clearness.

As to axioms, the axioms that belong to this subject are axioms of mental pathology. The facts they are enunciative of, are facts enunciative of certain sensations, as being produced by certain events or states of things operating as their efficient causes.

By a *reason* for any act, is conveyed the idea of its supposed addition, actual or probable, to the greatest happiness. This effect may be produced either — 1. Immediately; 2. Through an intervening chain of any number of links.

A *law* is a word employed in three different senses, which require to be distinguished: but in each of them it imports that the *will* to which it gives expression either emanates from the supreme authority in the state, or has that same authority for its support.

In one sense it denotes an entire command, — the whole matter of a command. Call this the *integral* sense, and the sort of law a *complete law*.

In the second sense it contains no more than a portion of a command; and the matter of the command may be to an indefinite extent voluminous, containing laws of the first-mentioned sort in any number: in this sense it has for its synonym the word enactment: call the law in this sense a *fractional* or *incomplete* law.

In the third sense it designates the aggregate body of the enactive paragraphs to which it happens to have received the token of their being expressive of the will of the person or persons invested with the supreme authority in the political state, or of some person who acts in this behalf, under, and by virtue of that same authority.

By *power of classification* a species of legislative power is exercised. Thus when an enactment to any effect has been framed, if by any proposition bearing the form of a command or a rule, enlargement or retrenchment is applied to the genus, or say class of objects which contribute to constitute the subject-matter of the command;—by this means, in a sort of indirect way, by and with the help of the other words which enter into the composition of the enactment, is produced the effect of a different enactment: one of the classes of which that same subject-matter is composed receives thereby *contraction* or en-

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largement, and a fresh classification is made thereby.

Note here — in the giving existence to an enactment, three distinguishable parts are capable of being taken — or say, functions are capable of being performed; viz. the *institutive*, the *constitutive*, and the *consummative;* and this whether by one and the same authority, or by so many different authorities: by exercise given to the power of classification in any instance, a different consummation as it were is given to the several enactments, in the matter of which, the generic words in question are any of them contained.

Of this same function — of this same power, exercise is made by any functionary, or set of functionaries, belonging to a department other than, and thence inferior to, the *legislative;* for in no other way can classes be filled up by individuals, and reality given to general ideas. Call this power, power of location, or say *locative* power. But what difference there is between this case and the preceding consists in this: in the former case, by no other authority than the legislative can the power be exercised — the effect produced: in the latter case it is produced in virtue of a general authorization given by the legislative authority, and by that authority is never produced, unless it be in consequence of some extraordinary occurrence.

So much for particular laws, and small masses of particular laws. Now for the divisions of the all-comprehensive aggregate in which they are all of them at all times comprised.

The Pannomion may be considered as composed of two branches — the effective and the constitutive.*

In the effective branch may be considered as contained the portion of the matter which is more immediately occupied in giving direction to the conduct of the members of the community of all classes.

The constitutive is occupied in determining who those persons in particular are, by whom the powers belonging to the effective branch shall be exercised.

Considered with relation to its connexion with good and evil employed in the character of punishment and reward for the purpose of giving direction to human conduct, the Pannomion is distinguished and divided into two branches — the directive and the sanctionative.

By the directive part, indication is given of the course which it is the desire of the lawgiver that upon the occasion in question the subject-citizens should pursue.

By the sanctionative part, information is given to them of the inducement which they will find for the pursuing of those same courses.

The matter of which this inducement is composed, is either the matter of good as above, or the matter of evil. Where and in so far as it is of the matter of good, *remunerative* is the name that may be given to the law: where and in so far as it is the matter of *evil*, penal is the name commonly given to the law — *punitive*, a name that may be given to it.

These two branches of a law are addressed to different descriptions of persons; — the *directive* to persons at large — the *sanctionative* to the members of the official establishment.

By the sanctionative, provision is made of the inducement, to which the legislator trusts for the compliance he seeks and expects to find on the part of those to whom the directive branch of the law is addressed. This inducement is the eventual expectation of either good or evil in the mind of those to whom the directive branch of the law is addressed: — if it be *good*, the law in that branch of it is syled a *remunerative* law: if *evil* a penal law.

The persons to whom a remunerative law is addressed are those functionaries belonging to the administrative department, by whom disposal is made of the money, or whatever else the matter of good employed consists of, directing them eventually to bestow the article in question on the person in question in the event of his having complied with the directive law in question, and thereby rendered the service desired at his hands.

The persons to whom a penal law is addressed, are the official persons belonging to the judiciary department, presided over and directed by the judges.

Of the matter to which it may be convenient to give insertion in the civil code, and to which accordingly insertion is given in it, there are two different sorts: one of which may be styled the *directive* as above — the other the expositive.

To the directive belongs that sort of matter, of which, under that name, mention has been already made — the directive, without the addition of the sanctionative, and in particular the punitive.

Not that, without the addition of the sanctionative, the directive could in general without absurdity be trusted to. Of a correspondent eventual punishment, including, where applicable, satisfaction, to be administered in case of non compliance, the existence must all along thereby be assumed. But in relation to punishment, this is the whole of that which naturally here finds its place: — in the

* It may also be considered as divided into substantive and adjective. The substantive branch of the law has for its business the giving direction and effect to human conduct; — the adjective has for its business the giving execution and effect to substantive law.

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penal code will be inserted all denunciation of extra punishment, together with what belongs to the mode in which the application made of the matter of punishment is brought about; — leaving to the civil code, the direction of the mode in which satisfaction, and in particular that branch of it which consists in the allotment of compensation for wrong, shall be administered.

The expositive matter belongs in common to, constitutes and forms part and parcel of, the directive part of the matter of the civil code, and the penal code.

Among the words and locutions, of which exposition is given in it, may be seen this or that word, in the exposition of which a prodigious quantity of matter is employed.

Take, for instance, the word *title* or the word *right*, when employed as synonymous with and equivalent to it. Exposition of it is alike necessary to the completion of any enactment belonging either to the civil or the penal code.

Take, in the first place, the *civil*. The principal part of it is occupied in the declaration of to what person or persons each subject-matter of property, each object of general desire, shall belong, in such sort as to be styled his or their own — who he is or they are, to whom it belongs — or say, who have title to it. Now, then, be the subject-matter what it may — who is it that has *title* to it? Who but he in whose favour some one in the list of completely collative events or states of things has place; no event or state of things having, with relation to that same title, an ablative effect, having at the same time place in the disfavour of that same individual.

So much for the portion in question — the portion of the matter of the civil code.

But not less necessary is reference made in the penal code to that same matter.

Take, for instance, in offences severally considered, offences affecting property, — the offence of *theft*. To the conveying of an accurate conception of the nature of this offence, mention of title is indispensable. Why? Answer: Because, when it is under the persuasion of his having a title to the thing in question, where it is under this persuasion that the man took it, — by no one will he be regarded as having committed the offence thus denominated: thence so it is, that in any well-adapted definition of this offence, averment of the non-existence of any such persuasion must be contained.

Not that in the idea of the offence it is necessary that the idea of any portion of that same matter in particular — the idea, for example, of any one collative event more than another — should have place.

Merely expositive, and mixed: of the one sort or the other will be found to be every particle of the matter which will with most convenience be aggregated to the matter of the civil code.

Constitutive of the mixed matter will be — 1. Matter of general concernment; 2. Matter of particular concernment.

CHAPTER III.

EXPOSITIONS.

ONLY with reference to language can the attribute denoted by the word universal be with propriety attributed to the subject of *law*.

In each country, at each point of time, it is matter of accident whether a law to a given effect is in force; though, consideration had of the general effect, and not of the particular tenor, in no inconsiderable quantity, masses of the matter of law might be found, such as are not likely to be wanting in any country that has the use of letters. A mass of the matter of language expressive of law might be found, of which the equivalent cannot be wanting, in any country, among any assemblage of human beings, in the presence of each other, for any considerable length of time. This may be styled the language of universal law.

Follows the exposition of some of these terms, the use of which exposition upon this occasion is not so much to teach as to fix their import: —

1. *Obligation*. — Obligations may exist without rights; — rights cannot exist without obligations.

Obligation — a fictitious entity, is the product of a law — a real entity.

A law, when entire, is a command; but a command supposes eventual punishment; for without eventual punishment, or the apprehension of it, obedience would be an effect without a cause.

Reward — eventual reward, is not capable of securing obedience to will signified, — is not capable of giving to will the effect of a command: — apprehension of the abstraction of reward already in possession or expectancy may do it. Yes: but though *reward* alone be the word employed in the description of the case, the operation signified is of the nature of punishment; — the effect of it not enjoyment, but suffering.

Obligation has place, when the desire on the part of the superior, the obliger, being signified to the obligee, he understands at the same time, that in the event of his failing to comply with such desire, evil will befal him, and that to an amount greater than that of any evil which he could sustain in compliance with that desire.

2. *Right*. — Otherwise than from the idea of obligation, no clear idea can be attached to the word *right*.

The efficient causes of right are two: —

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1. Absence of correspondent obligation. You have a *right* to perform whatever you are not under obligation to abstain from the performance of. Such is the right which every human being has in a state of nature.

2. The second efficient cause of right is, presence of correspondent obligation. This obligation is the obligation imposed upon other persons at large, to abstain from disturbing you in the exercise of the first-mentioned sort of right. The first-mentioned right may be termed a naked kind of right; — this second-mentioned right, a vested or established right.

The word right, is the name of a fictitious entity: one of those objects, the existence of which is feigned for the purpose of discourse, by a fiction so necessary, that without it human discourse could not be carried on.*

A man is said to have it, to hold it, to possess it, to acquire it, to lose it. It is thus spoken of as if it were a portion of matter such as a man may take into his hand, keep it for a time and let it go again. According to a phrase more common in law language than in ordinary language, a man is even spoken of as being invested with it. Vestment is clothing: invested with it makes it an article of clothing, and is as much as to say is clothed with it.

To the substantive word are frequently prefixed, as adjuncts and attributives, not only the word political, but the word natural and the word moral: and thus rights are distinguished into natural, moral, and political.

From this mode of speech, much confusion of ideas has been the result.

The only one of the three cases in which the word right has any determinate and intelligible meaning is that in which it has the adjunct political attached to it: in this case, when a man is said to have a right (mentioning it), the existence of a certain matter of fact is asserted; namely, of a disposition on the part of those by whom the powers of government are exercised, to cause him, to possess and so far as depends upon them to have the faculty of enjoying, the benefit to which he has a right. If, then, the fact thus asserted be true, the case is, that amongst them they are prepared on occasion to render him this service: and to this service on the part of the subordinate functionaries to whose province the matter belongs, he has, if so it be, a right; the supreme functionaries being always prepared to do what depends upon them to cause this same service to be rendered by those same subordinate functionaries.

Now, in the case of alleged natural rights, no such matter of fact has place — nor any matter of fact other than what would have place supposing no such natural right to have place. In this case, no functionaries have place — or if they have, no such disposition on their part, as above, has place; for if it have, it is the case of a political right, and not of a merely natural right. A man is never the better for having such natural right: admit that he has it, his condition is not in any respect different from what it would be if he had it not.

If I say a man has a right to this coat or to this piece of land, meaning a right in the political sense of the word, — what I assert is a matter of fact; namely, the existence of the disposition in question as above.

If I say a man has a natural right to the coat or the land — all that it can mean, if it mean any thing and mean true, is, that I am of opinion he ought to have a political right to it; that by the appropriate services rendered upon occasion to him by the appropriate functionaries of government, he ought to be protected and secured in the use of it: he ought to be so — that is to say, the idea of his being so is pleasing to me — the idea of the opposite result displeasing.

In the English language, an imperfection, perhaps peculiar to that language, contributes to the keeping up of this confusion. In English, in speaking of a certain man and a certain coat, or a certain piece of land, I may say it is right he should have this coat or this piece of land. But in this case, beyond doubt, nothing more do I express than my satisfaction at the idea of his having this same coat or land.

This imperfection does not extend itself to other languages. Take the French, for instance. A Frenchman will not say, *Il est droit que cet homme ait cet habit:* what he will say is, *Il est juste que cet homme ait cet habit. Cet appartient de droit a cet homme.*

If the coat I have on is mine, I have a *right* by law to knock down, if I can, any man who by force should attempt to take it from me; and this right is what in any case it can scarcely be but that a man looks to when he says, *I have a right* to a constitution, to such or such an effect — or a right to have the powers of government arranged in such manner as to place me in such or such a condition in respect of actual right, actually established rights, political rights.

To engage others to join with him in applying force for the purpose of putting things into a state in which he would actually be in possession of the right, of which he thus pretends to be in possession, is at bottom the real object and purpose of the confusion thus endeavoured to be introduced into men's ideas, by employing a word in a sense different from what it had been wont to be em-

* Though fictitious, the language cannot be termed *deceptious* in intention at least, whatsoever in some cases may without intention be the result.

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ployed, and from thus causing men to accede in words to positions from which they dissent in judgment.

This confusion has for its source the heat of argument. In the case of a political right, when the existence of it is admitted on all sides, all dispute ceases. But when so it is that a man has been contending for a political right which he either never has possessed, or having in his possession, is fearful of losing, he will not quietly be beaten out of his claim; but in default of the political right, or as a support to the political right, he asserts he has a natural right. This imaginary natural right is a sort of thread he clings by: — in the case in question, his having any efficient political right is a supposed matter of fact, the existence of the contrary of which is but too notorious; and being so, is but too capable of being proved. Beaten out of this ground, he says he has a natural right — a right given him by that kind goddess and governess Nature, whose legitimacy who shall dispute? And if he can manage so as to get you to admit the existence of this natural right, he has, under favour of this confusion, the hope of getting you to acknowledge the existence of the correspondent political right, and your assistance in enabling him to possess it.

It may, however, be said, to deny the existence of these rights which you call imaginary, is to give a *carte blanche* to the most outrageous tyranny. The rights of man anterior to all government, and superior as to their authority to every act of government, these are the rampart, and the only rampart, against the tyrannical enterprises of government. Not at all — the shadow of a rampart is not a rampart; — a fiction proves nothing — from that which is false you can only go on to that which is false. When the governed have no right, the government has no more. The rights of the governed and the rights of the government spring up together; — the same cause which creates the one creates the other.

It is not the rights of man which causes government to be established: — on the contrary, it is the non-existence of those rights. What is true is, that from the beginning of things it has always been desirable that rights should exist — and *that* because they do not exist; since, so long as there are no rights, there can only be misery upon the earth — no sources of political happiness, no security for person, for abundance, for subsistence, for equality: — for where is the equality between the famished savage who has caught some game, and the still more famishing savage who is dying because he has not caught any?

Law supposes government: to establish a law, is to exercise an act of government. A law is a declaration of will — of a will conceived and manifested by an individual, or individuals, to whom the other individuals in the society to which such will has respect are generally disposed to obey.

Now government supposes the disposition to obedience: — the faculty of governing on the one part has for its sole efficient cause, and for its sole measure, the disposition to obey on the other part.

This disposition may have had for its cause either *habit* or *convention:* a convention announces the will of one moment, which the will of any other moment may revoke; — habit is the result of a system of conduct of which the commencement is lost in the abyss of time. A convention, whether it have ever yet been realized or not, is at least a conceivable and possible cause of this disposition to obedience, from which government, and what is called political society, and the only real laws, result. Habit of obedience is the cause, a little less sure — the foundation, a little less solid, of this useful, social, disposition, and happily the most common.

The true rampart, the only rampart, against a tyrannical government has always been, and still is, the faculty of allowing this disposition to obedience — without which there is no government — either to subsist or to cease. The existence of this faculty is as notorious as its power is efficacious.

Shall this habit of obedience be continued unbroken, or shall it be discontinued upon a certain occasion? Is there more to be gained than to be lost in point of happiness, by its discontinuance? Of the two masses of evil, —intensity, duration, certainty, all included— which appears to be the greatest, that to which one believes one's self exposed from continued obedience, or that to which one believes one's self exposed by its discontinuance?

On which side is the greatest probability of success? On the side of the satellites of the tyrant, who will endeavour to punish me in case of disobedience? or on the side of the friends of liberty, who will rally around me to defend me against oppression?

It is an affair of calculation: and this calculation each one must make for himself according to circumstances. It is also a calculation that no one can fail to make, either ill or well, whatever may be the language he employs, or whosoever he may be.

But this calculation is not sufficiently rapid for those who choose for their amusement the destruction and reconstruction of governments. Rights of men strongly asserted, but ill-defined, never proved; rights of men, of which every violation is an act of oppression — rights ready to be violated at every moment — rights which the government violates every time it does anything which dis-

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pleases you — right of insurrection ready to be exercised the first moment that oppression occurs; — this is the only remedy which suits those who would make equality to flourish at any rate, by taking the power of governing for themselves, and leaving obedience for all others.

It is the weakness of the understanding which has given birth to these pretended natural rights; it is the force of the passions which has led to their adoption, when, desirous of leading men to pursue a certain line of conduct which general utility does not furnish sufficient motives to induce them to pursue, or when, having such motives, a man knows not how to produce and develope them, yet wishes that there were laws to constrain men to pursue this conduct, or what comes to the same thing, that they would believe that there were such laws, — it has been found the shortest and easiest method to imagine laws to this effect.

Behold the professors of natural law, of which they have dreamed — the legislating Grotii — the legislators of the human race: that which the Alexanders and the Tamerlanes endeavoured to accomplish by traversing a part of the globe, the Grotii and the Puffendorffs would accomplish, each one sitting in his arm chair: that which the conqueror would effect with violence by his sword, the jurisconsult would effect without effort by his pen. Behold the goddess Nature! — the jurisconsult is her priest; his idlest trash is an oracle, and this oracle is a law.

The jurisconsult in his arm-chair is an individual sufficiently peaceable: he lies, — he fabricates false laws in the simplicity of his heart; — desirous of doing something, ignorant how to do better, hoping to do well, he would not willingly injure any one. From his hands the instruments he employs have passed into hands of a far different temper.

The invention was fortunate: it spared discussion — it saved research and reflection — it did not require even common sense — it spared all forbearance and toleration: — what the oath is on the part of the footpad who demands your purse, the rights of man have been in the mouth of the terrorist.

Those who govern allege legal rights — the rights of the citizen — real rights: those who wish to govern allege natural rights — the rights of man — counterfeit rights — rights which are sanctioned by the knife of the assassin, as well as the gibbet and the guillotine.

Those to whom the faculty of making these imaginary laws, instead of real laws, has been transferred, have not much trouble in making them. Constitutions are made as easily as songs: they succeed each other as rapidly, and are as speedily forgotten.

For the making of real laws, talent and knowledge are requisite: for making real laws good or bad, labour and patience are requisite: but for the making of forgeries sources of the rights of man, nothing more is required than ignorance, hardihood, and impudence.

Rights of men, when placed by the side of legal rights, resemble assignats, whether false or genuine, placed by the side of guineas or Louis dor.

Two passions have laid claim to the giving birth to the declarations of rights — to the substitution, of the declaration of particular rights to the preparation of real laws — vanity and tyranny: vanity, which believes it can lull the world asleep, by being the first to do what all the world has always had before its eyes — tyranny, glad of finding a pretext for punishing all opposition, by directing against it the force of public hatred. Rights, there you have them always before your eyes: to deny their existence, is either to exhibit the most notorious bad faith or the most stupid blindness; the first a vice which renders you deserving of the indignation of all men — the other a weakness which consigns you to their contempt.

It is because without rights there can be no happiness, that it is at any rate determined to have rights: but rights cannot be created without creating obligations: it is that we may have rights, that we submit to obligations; and in respect to obligations, not to those alone which are strictly necessary for the establishment of the rights of which we feel the want, but also obligations such as those which may result from all the acts of authority exercised by government, which the general habit of obedience allows it to exercise.

The end of all these acts of authority should be to produce the greatest possible happiness to the community in question.

This is the true, and the only true end of the laws. Still, of the operations by which it is possible to conduct men towards this end, the effect — the constant, necessary, and most extensive effect, is to produce evil as well as good; to produce evil, that good may be produced, since upon no other conditions can it be produced.

The mystic tree of good and evil, already so interesting, is not the only one of its kind: life, society, the law, resemble it, and yield fruits equally mixed. Upon the same bough are two sorts of fruits, of which the flavour is opposite — the one sweet and the other bitter.

The sweet fruits are *benefits* of all kinds — the bitter and thorny fruits are burthens. The benefits are *rights*, which under certain circumstances are called *powers* — the burthens are *obligations* — *duties*.

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These products, so opposed in their nature, are simultaneous in their production, and inseparable in their existence. The law cannot confer a benefit, without at the same time imposing a burthen somewhere; — it cannot create a right, without at the same time creating an obligation — and if that right be of any value, even a numerous train of obligations.

But if among these moral as well as among physical products, the sweet cannot exist without the bitter, — the bitter can exist — it exists too often — without the sweet. Such is the case with those obligations which may be called pure or barren, which are not accompanied by rights, those benefits, those advantages, which sweeten and conceal the bitterness: — obligations which are fulfilled by useless efforts or sufferings, the fruit of every law produced by tyranny, neglecting or despising the counsels of utility, and yield- to the suggestions of caprice — unless the gratification of this caprice can be considered as a benefit.

Benefits being in themselves good, the well-instructed legislator (I mean, directed by utility) would create and confer them freely with pleasure. If it depended upon himself, he would produce no other fruits: if he could produce them in infinite quantity — he would accumulate them in the bosom of society; but as the inexorable law of nature is opposed to this course, and he cannot confer benefits without imposing burthens, all that he can do is to take care that the advantage of the benefit exceed the disadvantage of the burthen, and that this advantage be as great, and the disadvantage as small, as possible.

When, in order that a burthen may produce its effect—that the advantage expected from it may be produced, it is necessary that its weight be felt, it is called punishment.

It is thus that the non-penal branch of the law and the penal are both of them occupied in the establishing and securing every man in possession of his rights of all sorts. These rights are so many instruments of felicity — they are the instruments of whatsoever felicity a man can derive from government.

A man's political rights are either his private rights, or his constitutional rights. Under every form of government, every man has his private rights; — but there are forms of government, in which no man but one, or some other comparatively small number, have any constitutional rights.

Of private rights these five sorts have been distinguished: — 1. Rights as to person; 2. Rights as to property; 3. Rights as to power; 4. Rights as to reputation; 5. Rights as to condition in life.

All these rights have for their efficient cause certain services, which by a general and standing disposition on the part of the functionaries of government in the supreme grade are understood to have been rendered to every man, and which, in consequence, on each particular occasion the functionaries of judicature, and upon occasion the functionaries belonging to the army, hold themselves in readiness to render to him. These services consist in the giving execution and effect to all such ordinances of the government as have been made in favour and for the benefit of every individual situated in the individual situation in which in all respects he is situated.

In virtue and by means of that same standing and all-comprehensive service, the supreme rulers have given the name of *wrong*, and the name, quality, and consequence of an *offence*, to every act by which any such right is understood to have been broken, infringed, violated, invaded. In giving it the name of an offence, they have made provision of pain under the name of punishment, together with other means of repression, for the purpose of preventing the doing of it, or lessening as far as may be the number of instances in which it shall be done.

Rights are, then, the fruits of the law, and of the law alone. There are no rights without law — no rights contrary to the law — no rights anterior to the law. Before the existence of laws there may be reasons for wishing that there were laws — and doubtless such reasons cannot be wanting, and those of the strongest kind; — but a reason for wishing that we possessed a right, does not constitute a right. To confound the existence of a reason for wishing that we possessed a right, with the existence of the right itself, is to confound the existence of a want with the means of relieving it. It is the same as if one should say, *everybody is subject to hunger, therefore everybody has something to eat.*

There are no other than legal rights;—no natural rights — no rights of man, anterior or superior to those created by the laws. The assertion of such rights, absurd in logic, is pernicious in morals. A right without a law is an effect without a cause. We may feign a law, in order to speak of this fiction—in order to feign a right as having been created; but fiction is not truth.

We may feign laws of nature — rights of nature, in order to show the nullity of real laws, as contrary to these imaginary rights; and it is with this view that recourse is had to this fiction:—but the effect of these nullities can only be null.

3. *Possession.* — "Better," says a maxim of the old Roman, called civil law—"better (meaning in comparison with that of any other person,) is the condition of the possessor" — better his condition, that is to say, better the ground and reason which a person in his situation is able to make for the enjoyment of

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the thing, than any that can be made by any one else.

Of the propriety and reasonableness of this notion, scarcely by any one who hears of it, how far soever from being learned, can a sort of feeling fail of being entertained — by no one, even of the most learned, has expression, it is believed, been ever given to it. This omission the greatest-happiness principle, and that alone, can supply. In the case of loss of the possession, he who has the possession would feel a pain of privation — or say, regret, more acute—than a man of the same turn of mind, whose expectation of obtaining it was no stronger than the possessor's expectation of keeping it, would, in the event of his failing to obtain possession of it.

Of so many hundred millions of persons, each of whom, in case of his having had possession of the thing and then lost it, would upon the losing of it have felt pain in a certain shape proportioned to the value of the thing, not one feels pain in any shape at the thoughts of not having it: not one of them but might, in the shape in question, feel pain in any quantity more or less considerable, if after having the thing in possession, he were, without receiving or expecting any equivalent for it, to cease to have it.

The horse you have bred, and still keep in your stable, is yours. How is it constituted such — constituted by law? Answer: The naked right — the right of making use of it, the law has left you in possession of; — to wit, by the negative act of forbearing to inhibit you from using it: the established right, the law has conferred upon you by the order given to the judge to punish every person who shall disturb or have disturbed you in the use of it.

The horse which was yours, but by the gift you have made of it is become the horse of a friend of yours, — how has it been constituted such — constituted by law? Answer: By a *blank* left as it were in the command to the judge,—that blank being left to be filled up by you in favour of this friend of yours, or any other person to whom it may happen to be your wish to transfer the horse, either gratuitously or for a price.

So long as the law in question has this blank in it, it is an incompleted, an imperfect law — it waits an act on your part to render it a perfect one. The law in its completed state is the result of two functions, into which the legislative function in this case is divided — the initiative to it, and the consummative. By the legislator, the initiative is exercised — by you, the consumative.

In the same way in which, according to this example, rights and powers are given to individual persons, they may be and are given to classes of persons. On classes of persons, the correspondent obligations not only may, but must be imposed: in short, exceptions excepted, they must be imposed on all persons of all classes; — for supposing but a single person excepted from the obligation, your right is not entire, — it is shared by you with the person so excepted. If, for example, in transferring the horse to your friend, you kept yourself from being included in the obligation to abstain from the use of the horse — if, in a word, you kept yourself excepted from the obligation imposed on other persons in general, the horse is not your friend's alone, any more than yours; but, in the language of English law, you and he are joint tenants of the horse.

4. *Power.* — In common speech, the word power is used in two senses; — to wit, the above sense, which may be called the proper and legal sense — and another sense more ample, which may be styled the popular sense.

In the strictly legal sense, which is used in the penal and civil branches of law — in the popular sense, which is used in the constitutional branch.

In both cases, the fruit of the exercise of the power is looked to, and that fruit is compliance: on the part of the person subject to power, compliance with the wishes expressed, or presumed to be entertained, by the person by whom the power is possessed. For convenience of discourse, say in one word the *power-holder*.

The force of the remunerative sanction, it has above been observed, is not sufficient to constitute an obligation; it is, however, in a certain sense, sufficient, as everybody knows, to constitute power: the effect of power is produced, in so far as, by the will declared or presumed of him who in this sense is the power-holder, compliance is produced.

Power may be defined to be the faculty* of giving determination either to the state of the passive faculties, or to that of the active faculties, of the subject in relation to and over which it is exercised; — say the correlative subject.

Power is either coercive or allocative.

Coercive power is either restrictive or compulsive.

* In this form, the exposition is of the sort styled *definition*, in the narrowest sense of the word, — *definitio per genus et differentiam*: — exposition effected by indication given of the next superordinate class of objects in which the object in question is considered as comprehended, together with that of the qualities peculiar to it with reference to the other objects of that same class.

The import of the word *faculty* being still more extensive than that of the word power, as may be seen by its assuming the adjunct passive, the word power is, in a certain sense, not unsusceptible of the definition *per genus et differentiam*: but to complete the exposition, an exposition by periphrasis may perhaps require to be added.

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Of the correlative subject, the passive faculties are either insensitive or sensitive.

If merely insensitive, it belongs to the class of inanimate beings, and is referred to the still more general denomination of things.

If sensitive, to the class of animals.

If the animals of the class in question are considered as belonging to the class of reasonable beings, the correlative subject is a person — including human beings of both sexes and all ages.

If considered as irrational, it has hitherto by lawyers been confounded with inanimate beings, and comprehended under the denomination of things.

In so far as the power is exercised with effect, the possessor of the power — say the power-holder — may, relation had to the correlative subject, be termed the *director* — the correlative subject the *directee*.

5. *Command.* — An instrument which as above has been mentioned as necessary to the generation of the fictitious entities, called a right and a power, is, as has been seen, a command. But a command is a discourse, expressive of the wish of a certain person, who, supposing his power independent of that of any other person, and to a certain extent sufficiently ample in respect of the subject-matters — to wit, persons, things moveable and immoveable, and acts of persons, and times — is a legislator; — say a legislator in the singular: for simplicity sake, the case of a division of the legislative power among divers persons or classes of persons, may on this occasion be put aside.

6. *Quasi Commands.* — Now then comes a doubt, and with it a question: — in the state of things you have hitherto been supposing, the law in question is of that sort called statute law: and in the case of statute law the print of a command is sufficiently visible. But obligations are created — rights established, not only by statute law, but by another species of law called common law: Where in this case is the command? — where is the person by whom it has been issued? — where, in a word, is the legislator? The judge is not a legislator. Far from claiming so to be, he would not so much as admit himself to be so: he puts aside, if not the function, at any rate the name.

Hitherto we have been in the region of realities: we are now of necessity transported into the region of fictions. In the domain of common law, everything is fiction but the power exercised by the judge.

On each occasion the judge does, it is true, issue a command: — this command is his decree; but this decree he on every occasion confesses he would not on any occasion have the power of issuing with effect, were it not for a command, general in its extent, and in such sort general as to include and give authority to this individual decree of his.

To be what it is, a command, general or individual, must be the command of some person. Who in this case is this person? Answer: Not any legislator; for if it were, the law would be a statute law. A person being necessary, and no real one to be found, hence comes the necessity of a fictitious one. The fictitious one, this fictitious person, is called the common law — or more generally, that he may be confounded with the real person in whose image he is made, *the law*.

To warrant the individual decree which he is about to pronounce, the judge comes out with some general proposition, saying, in words or in effect, *thus saith* THE LAW. On the occasion of the issuing of this sham law, the pretext always is, that it is but a copy of a proposition, equally general, delivered on some former occasion by some other judge or train of successive judges.

In this proposition there may be or may not be a grain of truth, but whether there be or be not, the individual decree has in both cases alike the effect of a law — of a real law — issued by a legislator avowing himself such, and acknowledged as such.

A command being the generic name of the really existing instrument of power called *a law*, let *a quasi command* be the name of that counterfeit instrument feigned to answer the purpose of it, to produce the effects of it, for the purpose of enabling the judge to produce, in the way of exacting compliance, the effect of a law.

Of this appellation the use and need will be seen in the procedure code, on the occasion of the formula called the demand paper, provided for the purpose of giving commencement to a suit in that same code.*

Supposing the connexion between a command in the mandatory form, and a proposition in the assertive form, made out and explained: whatsoever proposition would, if emanating from the legislator, have constituted an apposite ground for the *demand*—to wit, the demand made in the *demand paper*, elsewhere spoken of — a proposition to that same effect might equally well serve, if stated as being a proposition conformable to the doctrine of the common law. In the one case, the proposition would be a reality, in the other case a fiction: in the one case, what were the proper words of it could not be a subject-matter of dispute; in the other case it might, and would frequently be the subject-matter of dispute: still, however, in the character of a ground of inference, it would in both cases be equally intelligible.

Be this as it may — not to the plan here proposed would the imperfections of this part of the instrument of demand with propriety be ascribable. The root of the imperfection is in the very nature of the common law. To its supreme inaptitude, by the proposed in-

* See *Principles of Procedure*, Vol. II. p. 65, Ch. XII. § 4.

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strument, such remedy as the nature of the case admitted is applied, and the use thus made of the common law is the result — not of choice, but of unresistible necessity. How sadly inadequate a portion of this fictitious law is, in the character of a succedaneum, to a correspondent and equivalent portion of real law, would on each occasion be visible to every eye; and as often as it came under the eye, so often would the urgency of the demand for the substitution of real to sham law be forced upon the attention. What would be in the power of the legislature to do at any time, and in the compass of a day, is to substitute this plain speaking form of demand to the existing absurd and deceptious one: what it is not in his power to do in the compass of a day, nor perhaps till at the end of some years, is the complete substitution of real to sham and impostor's law, — substitute, and audacious rival of the only genuine law.

CHAPTER IV.

AXIOMS.

§ 1. *Axioms of Mental Pathology — a necessary ground for all legislative arrangements.*

By an axiom of mental pathology, considered as a ground for a legislative arrangement, understand a proposition expressive of the consequences in respect of pleasure or pain, or both, found by experience to result from certain sorts of occurrences, and in particular from such in which human agency bears a part: in other words, expressive of the connexion between such occurrences as are continually taking place, or liable to take place, and the pleasures and pains which are respectively the results of them.

Practical uses of these observations, two: — 1. With regard to pleasures, the learning how to leave them undisturbed, and protected against disturbance — (for as to the giving increase to them by the power of the legislator to anything beyond a very inconsiderable amount, it is neither needful nor possible;) 2. With regard to pains, the learning how on each occasion to minimize the amount of them in respect of magnitude and number — number of the individuals suffering under them — magnitude of the suffering in the case of each individual.

Arithmetic and medicine — these are the branches of art and science to which, in so far as the maximum of happiness is the object of his endeavours, the legislator must look for his means of operation: — the pains or losses of pleasure produced by a maleficent act correspond to the symptoms produced by a disease.

Experience, observation, and experiment — these are the foundations of all well-grounded medical practice: experience, observation, and experiment — such are the foundations of all well-grounded legislative practice.

In the case of both functionaries, the subject-matter of operation and the plan of operation is accordingly the same — the points of difference these: — In the case of the medical curator, the only individual who is the subject-matter of the operations performed by him, is the individual whose sufferings are in question, to whom relief is to be administered. In the case of the legislator, there are no limits to the description of the persons to whom it may happen to be the subject-matter of the operations performed by him.

By the medical curator, no power is possessed other than that which is given either by the patient himself, or in case of his inability, by those to whose management it happens to him to be subject: — by the legislatorial curator, power is possessed applicable to all persons, without exception, within his field of service; each person being considered in his opposite capacities — namely, that of a person *by whom* pleasure or pain, or both, may be experienced, and that of a person *at whose hands* pleasure or pain, or both, may be experienced.

Axioms of *corporal* pathology may be styled those most extensively applicable positions, or say propositions, by which statement is made of the several sorts of occurrences by which pleasure or pain are or have place in the human body: — as also, the results observed to follow from the performance of such operations as have been performed, and the application made of such subject-matters as have been applied for the purpose of giving increase to the aggregate of pleasure, or causing termination, alleviation, or prevention, to have place in regard to pain.

Axioms of *mental* pathology may be styled those most commonly applicable propositions by which statement is made of the several occurrences by which pleasure or pain is made to have place in the human mind: — as also, the results observed to follow from the performance of such operations as have been performed, and the application of such subject-matters as have been applied for the purpose of effecting the augmentation of the aggregate of the pleasures, or the diminution of the aggregate of the pains, by the termination, alleviation, or prevention of them respectively, when individually considered.

Security — subsistence — abundance — equality — *i. e.* minimization of inequality: — by these appellatives, denomination has been given to the particular ends which stand next in order to the universal, and the greatest happiness of the greatest number. This being admitted, these are the objects which will be in view in the formation of the several axioms of pathology which present themselves

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as suitable to the purpose of serving as guides to the practice of the legislatorial curator.

Unfortunately, on this occasion, the imperfection of language has produced an embarrassment, which it does not seem to be in the power of language altogether to remove: all that can be done, is to lessen and alleviate it. Subsistence — abundance — equality, — these three immediately subordinate ends are conversant about the same matter; to wit, the matter of wealth. But security, besides a matter of its own, is conversant with that same matter, with which, as above, they are conversant; to wit, the matter of wealth: security for the matter of wealth — or say, to each individual, security for that portion of the matter of wealth which at the time in question belongs to him, and is called his. Security is accordingly security against all such maleficent acts by which any portion of the matter of wealth which ought to be at the disposal of the individual in question, is prevented from being at his disposal at the time in question. Now, the not having at his disposal at the time in question a certain portion of the matter of wealth, is indeed one efficient cause of pain to the individual in question, be he who he may, but it is but one out of several. In addition to the matter of wealth, sources of pleasure, and of exemption from pain, are certain others which have been found reducible under the following denomitions; to wit, power, reputation, and condition in life: — condition in life, to wit, in so far as, reference had to the individual whose it is, the effect is considered as beneficial — this complex subject-matter including in it the three subject-matters above mentioned — that is to say, the matter of wealth, or in two words, power and reputation.

Correspondent to these several subject-matters of security are so many classes of offences — of maleficent acts, by the performance of which such security is disturbed. Offences affecting property — offences affecting power — offences affecting reputation — offences affecting condition in life.

But all these subject-matters are, with reference to the individual in question, distinct from him, and exterior to him; — and in a more immediate way — and otherwise than through the medium of any of these outworks, he stands exposed to be made to suffer pain, as well of mind as of body, by the agency of every other individual, in whose instance a motive adequate to the purpose of producing an act by which it will be inflicted, has place. Thus, then, in addition to offences affecting property — offences affecting power — offences affecting reputation — offences affecting condition in life, — we have offences affecting person, considered with reference to its two distinguishable parts, body and mind.

So many of these classes of maleficent acts, so many branches of security: in which list, as being the most obviously and highly important, and most simple in the conception presented by it, security *against* maleficent acts affecting *person* — more shortly, security for person, presents itself as claiming to occupy the first place; after which, security for property, and so forth, as above.

§ 2. *Axioms applicable to Security for Person.*

Axioms forming the grounds for such legislative arrangements as have for their object and their justification, the affording security for person against such maleficent acts, to which it stands exposed.

1. The pleasure derivable by any person from the contemplation of pain suffered by another, is in no instance so great as the pain so suffered.

2. Not even when the pain so suffered has been the result of an act done by the person in question, for no other purpose than that of producing it.

Hence, one reason for endeavouring to give security against pain of body or mind, resulting from human agency, whether from design or inattention.

Now, suppose the pain to be the result of purely natural agency, — no human agency having any part in the production of it — no human being deriving any satisfaction from the contemplation of it, — the result is still the same.

Hence one reason for endeavouring to give security against pain of body or mind resulting from casualty, or as the word is, when the evil is considered as having place upon a large scale, — *calamity*.

Axiom indicative of the reasons which form the grounds of the enactments prohibitive of maleficent acts, productive of evil, affecting persons — that is to say, either in body or mind — in any mode not comprised in one or other of the modes of maleficence from which the acts constituted offences in and by the penal code receive their denomination, viz. Offences produced by the irascible appetite: —

When by one person, without gratification sought other than that derived from the contemplation of suffering in this or that shape, as about to be produced on the part of that other gratification in a certain shape, is accordingly produced in the breast of such evil doer, — call the gratification the pleasure of *antipathy satisfied* — or of *ill-will satisfied*.

If this antipathy has had its rise in the conception that by the party in question (say the victim), evil in any shape has been done to the evil doer, — the pleasure of antipathy gratified takes the name of the pleasure of *vengeance* — or say *revenge*.

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Axiom. In no case is there any reason for believing that the pleasure of antipathy gratified is so great as the pain suffered by him at whose expense, as above, the pleasure is reaped.

Offences to which the axiom applies are — 1. Offences affecting body; 2. Offences affecting the mind other than those belonging to the other classes; 3. Offences affecting reputation — the reputation of the sufferer — other than those by which the reputation of the evil doer is increased; 4. Offences affecting the condition in life of the sufferer, other than those by which the reputation of the evil doer is increased or expected to be increased.

For justification of the legislative arrangements necessary to afford security against maleficent acts affecting the person, what it is necessary to show is, that by them pain will not be produced in such quantity as will cause it to outweigh the pleasure that would have been produced by the maleficent acts so prevented.

For this purpose, in order to complete the demonstration and render it objection-proof, in certain cases, it will be necessary to take into account not only the evil of the first order, but the evil of the second order likewise.

First, then, considering the matter on the footing of the effects of the first order on both sides, — Axioms bearing reference to the effects of the first order on both sides, are the following: —

Axioms serving as grounds and reasons for the provision made by the legislator for general security; — to wit, against the evils respectively produced by the several classes and genera of offences.

Case 1. An offence affecting person, or say corporal vexation, in any one of its several shapes — offender's motive, ill-will or spite — the enjoyment of the offender will not be so great as the evil of the first order, consisting in the suffering experienced by the party vexed.

Case 2. So if the offence be an offence productive of mental vexation — and the motive the same.

Case 3. So if the offence be an offence affecting reputation.

Case 4. So, exceptions excepted, in the case of every other class or genus of offences, the motive being ill-will or spite, as above.

Case 5. Exceptions are among offences affecting person and reputation jointly, the offences having for their motive sexual desire; to wit — 1. Sexual seduction, allurative, or say enticitive; 2. Sexual seduction compulsory; 3. Rape; 4. Vexatious lascivious contrectation.

In any of these cases, what may happen is — that the enjoyment of the offender may be equal or more than equal to the suffering of the party wronged; in either of which cases the evil of the first order has no place. But to all other persons, the suffering of the one part will present itself as being to an indefinite degree greater than the enjoyment of the offender and proportioned to the apparent excess will be the actual alarm on the part and on behalf of persons exposed to the like wrong from the same cause: and thence, so far as regards alarm, will be the evil of the second order.

Addendum to security axioms: —

Be the modification of the matter of prosperity what it may, by losing it without an equivalent, a man suffers according to, and in proportion to, the value of it in his estimation — the value by him put upon it.

Value may be distinguished into — 1. General, or say value in the way of *exchange*; and 2. Special, or say idiosyncratical — value in the way of *use* in his own individual instance.

Note, that the value of a thing in the way of exchange arises out of, and depends altogether upon, and is proportioned to, its value in the way of use: — for no man would give anything that had a value in the way of use in exchange for anything that had no such value.

But value in the way of use may be distinguished into *general*, which has place so far as, and no further than, the thing is of use to persons in general — and *special* or idiosyncratical, which has place in so far as, in the case of this or that person in particular, the thing has a value in the way of use over and above the value which it has in the case of persons in general: of which use, that of the *pretium affectionis*, the *value of affection*, is an example.

Definition: When from any cause — human agency or any other — a mass of the matter of wealth, or of the matter of prosperity in any other shape, is made to go out of an individual's possession or expectancy without his consent, the pain produced in his breast by contemplation of its non-existence, or say by the loss of it, call *the pain of disappointment*: he being disappointed at the thought of the good which, it having been in his possession or expectancy, he has thus lost.

Among the objects of law in every community, is the affording security against this pain in this shape.

Axiom: The pleasure of antipathy or revenge produced in the breast of the evil-doer by the contemplation of a pain of disappointment produced in the breast of the sufferer, is not in any case so great in magnitude as that same pain.

To this axiom corresponds, as being thereon grounded, a fundamental principle entitled the *disappointment-preventing principle.*

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Operation necessary for the establishment and continuance of security, — Fixation of the text of the laws.

For leading expectation, the law need only be exhibited, provided that it be clear, and not too vast for comprehension. But that it may be exhibited, it is necessary that it exist. The greatest and most extensive cause of regret respecting English law, is, — that as respects a large portion, it has no existence. Instead of laws, it cannot even be said that we possess shadows of law: — shadows imply substances by which they are formed; — all that we possess is a *phantom*, conjured up by each one at his pleasure, to fill the place of the law. It is of these phantoms that *common law, unwritten, judge-made* law, is composed.

A discussion upon a point of unwritten or common law has been defined *a competition of opposite analogies*. In giving this definition, the most severe and well-deserved censure was passed both upon this species of law, and upon the carelessness of the legislators who have tolerated its pernicious existence — who have allowed the security of their fellow-citizens to remain without foundation, tossed about by the interminable and always shifting competition of opposite analogies, — who have left it upon a quicksand, when they might have placed it upon a rock.

§ 3. *Axioms pathological, applicable to Subsistence.*

Axiom 1. Though to each individual his own subsistence be, by the nature of man, rendered the chief object of his care, and during his infancy an object of care to the author of his existence, yet a considerable portion of the aggregate number of the members of the community there will always be, in whose instance a subsistence cannot have place (without the legislator's care) without provision made by the legislator to that effect.

2. For the subsistence of all, and accordingly of these, provision will to a certain degree have been made by the provision for security in all its shapes, and for security of property in particular: as also for abundance; for abundance, because of the abundance possessed by some is composed a stock, a fund, out of which matter is capable of being taken applicable to the purpose of affording, whether immediate or through exchange, subsistence to others. But for the subordinate end to the purpose here in question, the utmost of what can be done for these two other subordinate ends, taken together, will not of itself be sufficient.

Of the nonpossession of the matter of subsistence in such quantity as is necessary to the support of life, death is the consequence: and such natural death is preceded by a course of suffering much greater than what is attendant on the most afflictive violent deaths employed for the purpose of punishment.

Rather than continue to labour under this affliction, individuals who are experiencing it will naturally and necessarily, in proportion as they find opportunity, do what depends upon them towards obtaining, at the charge of others, the means of rescuing themselves from it: and in proportion as endeavours to this purpose are employed, or believed to be intended to be employed, security for property is certainly diminished — security for person probably diminished on the part of all others.

By the coercive authority of the legislator provision cannot be made for the indigent, otherwise than by defalcation from the mass of the matter of abundance possessed by the relatively opulent, nor yet, without a correspondent defalcation more or less considerable, from security for property on their part.

In every habitable part of the earth, people, so soon as they behold themselves and their eventual offspring secured against death for want of the matter of subsistence, which security cannot be afforded otherwise than by correspondent defalcation from the matter of abundance in the hands of the relatively opulent, will continue to effect addition to the number of its inhabitants. But this augmentation thus produced will proceed with much greater rapidity than any addition that can be made to the quantity of the matter of subsistence possessed, as above, by the indigent, by defalcation made at the expense of security for property, as well as from the matter of abundance, by correspondent defalcation from the matter of abundance in the hands of the relatively opulent.

The consequence is, that sooner or later, on every habitable part of the earth's surface, the community will be composed of three classes of inhabitants: — 1. Those by whom, with the addition of more or less of the matter of abundance, the matter of subsistence is possessed in a quantity sufficient for the preservation of life and health; — 2. Those who, being in a state in which they are perishing for want of the matter of subsistence, are on their way to speedy death; — 3. Those who to save themselves from impending death are occupied in waging war upon the rest, providing the means of subsistence for themselves at the expense of the security of all, and the matter of subsistence and abundance in the possession of all.

So long as by arrangements taken for the purpose by government, the thus redundant part of the population can be cleared off by being conveyed from the habitable part of the globe in question to some other part, these two classes of quickly perishing individuals may be prevented from receiving for-

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mation, or if formed, from receiving increase. But in no one part of the habitable globe can this be done by government without expense, nor the matter of expense be obtained without defalcation made from security, and suffering from loss, by forced contribution as above; and sooner or later, in proportion as property and security for property establishes itself, the whole surface of the habitable globe cannot but be fully peopled, in such sort, that from no one spot to any other could human creatures be transplanted in a living and about to live state.

Human benevolence can, therefore, hardly be better employed than in a quiet solution of these difficulties, and in the reconciliation of a provision for the otherwise perishing indigent, with this continual tendency to an increase in the demand for such provision.

§ 4. *Axioms applying to Abundance.*

1. Included in the mass of the matter of abundance, is the mass of the matter of subsistence. The matter of wealth is at once the matter of subsistence and the matter of abundance: the sole difference is the quantity; — it is less in the case of subsistence — greater in the case of abundance.

2. If of two persons, one has the minimum of subsistence without addition, — and the other, that same minimum with an addition, — the former has the matter of subsistence, the latter the matter of abundance: — understand, in comparison with him who has nothing beyond the minimum of the matter of subsistence, — the term abundance being a comparative, a relative term.

3. The matter of subsistence being, in the instance of each individual, necessary to existence, and existence necessary to happiness, — suppose a quantity of the matter of wealth sufficient for the subsistence of 10,000 persons, at the disposition of the legislator; — more happiness will be producible, by giving to each one of the 10,000 a particle of the matter of subsistence, than by giving to 5000 of them a portion of the matter of abundance composed of two particles of the matter of subsistence, and then giving none to the remaining 5000: since, on that supposition, the 5000 thus left destitute would soon die through a lingering death.

4. But suppose that, after giving existence to the 10,000, and to each of them a particle of the matter of subsistence, the legislator have at his disposal a quantity of the matter of wealth sufficient for the subsistence of other 10,000 persons, and that he have the option — of either giving existence to an additional number of persons to that same amount, with a minimum of the matter of subsistence to each, — or instead, without making any addition to the first 10,000, of giving an addition to the quantity of wealth possessed by them, — a greater addition to the aggregate quantity of happiness would be made by dividing among the first 10,000 the whole additional quantity of wealth, than by making any addition to the number of persons brought into existence. For, supposing the whole 10,000 having each of them the minimum of the matter of subsistence on any given day, — the next day, in consequence of some accident, they might cease to have it, and in consequence cease to have existence: whereas, if of this same 10,000, some had, in addition to his minimum of the matter of subsistence, particles one or more of the matter of abundance, here would be a correspondent mass of the matter of wealth, capable of being by the legislator so disposed of as to be made to constitute the matter of subsistence to those who, otherwise being without subsistence, would soon be without existence.

5. Not that, as between the matter of subsistence, and the matter of abundance, the identity is other than virtual — identity with reference to the purpose here in question, to wit, the effect on happiness; — and this virtuality depends upon the facility of obtaining one of the sorts of matter necessary to subsistence, in exchange for matter neither necessary, nor so much as contributing to subsistence — potatoes, for example, in exchange for coin; but so far as is necessary to the guidance of the legislator's practice, this virtual identity always has had, and is likely always to have place.

6. Thus it is that the matter of abundance, as contradistinguished from the matter of subsistence, is contributory to happiness, in three distinguishable ways or capacities: — 1. As contributing in a direct way to enjoyment, in a degree over and above what could be contributed by the mere matter of subsistence; 2. As contributing in an indirect way to security, to wit, by its capacity of serving, in the way of exchange, for the obtainment of the efficient instruments of security in any of these shapes; 3. As eventually contributing, in the same indirect way, to subsistence.

§ 5. *Axioms applying to Equality,* in respect of wealth.*

I. Case or state of things the first.—The quantities of wealth in question, considered as being in a quiescent state, actually in the hands of the two parties in question: neither entering into, nor going out of the hands of either.

1. *Cæteris paribus*, — to every particle of the matter of wealth corresponds a particle of the matter of happiness. Accordingly, thence,

2. So far as depends upon wealth, — of

* See also *Principles of the Civil Code*, ch. 6, Vol. I. p. 304.

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two persons having unequal fortunes, he who has most wealth must by a legislator be regarded as having most happiness.

3. But the quantity of happiness will not go on increasing in anything near the same proportion as the quantity of wealth: — ten thousand times the quantity of wealth will not bring with it ten thousand times the quantity of happiness. It will even be matter of doubt, whether ten thousand times the wealth will in general bring with it twice the happiness.* Thus it is, that,

4. The effect of wealth in the production of happiness goes on diminishing, as the quantity by which the wealth of one man exceeds that of another goes on increasing: in other words, the quantity of happiness produced by a particle of wealth (each particle being of the same magnitude) will be less and less at every particle; the second will produce less than the first, the third than the second, and so on.

5. Minimum of wealth, say £10 per year; — greatest excess of happiness produced by excess in the quantity of wealth, as 2 to 1: — magnitude of a particle of wealth, £1 a year. On these data might be grounded a scale or table, exhibiting the quantities of happiness produced, by as many additions made to the quantity of wealth at the bottom of the scale, as there are pounds between £10 and £10,000.

II. Case, or state of things the second, — the particles of wealth about to enter into the hands of the parties in question.

1. Fortunes unequal: — by a particle of wealth, if added to the wealth of him who has least, more happiness will be produced, than if added to the wealth of him who has most.

2. Particles of wealth at the disposition of the legislator, say 10,000; — happiness of the most wealthy to that of the least wealthy, say (as per No. 5,) as 2 to 1:—by giving to each one of 10,000 a particle of wealth, the legislator will produce 5000 times the happiness he would produce by giving the 10,000 particles to one person.

3. On these data might be grounded a scale, exhibiting the quantities of happiness produced, by so many additions made as above to the minimum of wealth, to the respective happiness of any number of persons, whose respective quantities of wealth exceed one another, by the amount of a particle in each instance.

III. Case, or state of things the third, — the particles of wealth about to go out of the hands of the parties.

1. By the subtraction of a particle of the matter of wealth, a less subtraction from happiness will be produced, if made from the wealth of him who has the matter of abundance, than if from the wealth of him who has the matter of subsistence only.

2. So, if from the wealth of him who has a larger portion of the matter of abundance, than if from the wealth of him who has not so large a portion of the matter of abundance.

3. Fortunes equal, and the aggregate sum subtracted being given, the greater the number of the persons from whose wealth the subtraction is made, the less will be the subtraction thereby made from the aggregate of happiness.

4. Fortunes unequal, still less will be the subtraction of happiness, if it be in the ratio of their fortunes that the subtraction is made, the greatest quantity being subtracted from those whose fortunes are greatest.

5. A quantity of the matter of wealth may be assigned, so small, that if subtracted from the fortune of a person possessed of a certain quantity of the matter of abundance, no sensible subtraction of happiness would be the result.

6. The larger the fortune of the individual in question, the greater the probability that, by the subtraction of a given quantity of the matter of wealth, no subtraction at all will be made from the quantity of his happiness.

7. So likewise, if the ratio of the sum to be subtracted, to the aggregate mass from which it is to be subtracted, be so great, that by the subtraction of it, subtraction of a quantity, more or less considerable, cannot but be made from the aggregate of happiness, — still the larger, in the case of each individual, the aggregate of wealth is from which the subtraction is made, the less will be the quantity of happiness so subtracted, as above.

IV. Case, or state of things the fourth, — the particles of wealth about to go out of the hands of the one party into the hands of the other.

1. Fortunes equal: — take from the one party a portion of the matter of wealth and give it to the other, — the quantity of happiness gained to the gainer of the wealth will not be so great as the quantity of happiness lost to the loser of the wealth.

2. Fortunes unequal: — the poorer the loser, the richer the gainer: greater in this case is the diminution produced in the mass of happiness by the transfer, than in the last mentioned case.

3. Fortunes again unequal: — the richer the loser, the poorer the gainer: the effect produced on happiness by the transfer may in in this case be either loss or gain.

Whether it be the one or the other, will depend partly upon the degree of the inequality, partly upon the magnitude of the portion of wealth transferred. If the inequality be very small, and the wealth transferred also

* In England a disproportion still greater than this is actually exemplified.

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small, the effect produced on the sum of happiness may be loss. But if either be — much more if both be other than, very small, the effect on happiness will be gain.

4. Income of the richer, say £100,000 a-year — income of the less rich, say £99,999 a-year: wealth taken from the first, and transferred to the less rich, £1 a-year: — on the sum of happiness the effect will be on the side of loss; — more happiness will be lost by the richer than gained by the less rich.

Hence one cause of the preponderance produced on the side of evil by the practice called gaming.

5. Income of the richer loser, £100,000 a-year; — income of the less rich gainer, £10 a-year; — wealth lost to the richer, gained by the less rich, £1 a-year: — on the sum of happiness the effect will be on the side of gain. More happiness will be gained by the less rich gainer, than lost by the more rich loser.

Thus it is, that if the effects of the first order were alone taken into account, the consequence would be, that, on the supposition of a new constitution coming to be established, with the greatest happiness of the greatest number for its end in view, sufficient reason would have place for taking the matter of wealth from the richest and transferring it to the less rich, till the fortunes of all were reduced to an equality, or a system of inequality so little different from perfect equality, that the difference would not be worth calculating.

But call in now the effects of the second and those of the third order, and the effect is reversed: to maximisation of happiness would be substituted universal annihilation in the first place of happiness — in the next place of existence. Evil of the second order, — annihilation of happiness by the universality of the alarm, and the swelling of danger into certainty: — Evil of the third order, — annihilation of existence by the certainty of the non-enjoyment of the fruit of labour, and thence the extinction of all inducement to labour.

Independently of the destruction which would thus be produced by carrying, or even by the known intention of carrying to its utmost possible length the equalization, or say levelling system, as above, diminution would be effected in the aggregate of happiness, by the extinction of the fund afforded by the matter of abundance for keeping undiminished the stock of the matter of wealth necessary for subsistence.

On consideration of what is stated above, it will be found that the plan of distribution applied to the matter of wealth, which is most favourable to universality of subsistence, and thence, in other words, to the maximization of happiness, is that in which, while the fortune of the richest — of him whose situation is at the top of the scale, is greatest, the degrees between the fortune of the least rich and that of the most rich are most numerous, — in other words, the gradation most regular and insensible.

The larger the fortunes of the richest are, the smaller will be the number of those whose fortunes approach near to that high level: the smaller, therefore, the number of those from whose masses of property the largest defalcation could by possibility be made: — and, moreover, the larger those masses, the greater would be the difficulty which the legislator would experience as to the obtaining at their charge such defalcation as the nature of the case would not exclude the possibility of making.

Thus, for example, it would, in case of over population, be easier in England, or even in Ireland, to ward off famine for a time, than it would be in British India.

Equality requires, that though it be at the expense of all the other members of the community, the income of those whose income is composed of the wages of labour be maximized. Reason: Of these are composed the vast majority of the whole number of the members of the community.

Exceptions excepted, equality requires that the profits of stock be minimized. Reason: Because the net profit of stock is composed of the mass, or say portion remaining to the employer of the stock, after deduction made of the wages of the labour applied to it.

Exception will be — if this supposed case be really exemplified — where the possessors of the wages of labour are so many, and the possessors of the profits of stock so few, that by a small addition to the one, no sensible defalcation will be made from the other.

§ 6. *Axioms relating to Power, Rank, and Reputation.*

By axioms relating to power, understand self-serving power, exempt from the obligation by which it is converted into trust.

As between individual and individual, the pleasure to the superior, to the power-holder, from the possession and exercise of the power, is not so great as the pain experienced by the party subjected.

Therefore, only when converted into extra-benefiting by appropriate obligation, can it be conducive to greatest happiness.

The same observations will equally apply to rank, and factitious estimation produced by rank.

So also to extra reputation, or say estimation, unless when acquired by service rendered to others.

The principle corresponding to these axioms, as to equality, is *the inequality-minimizing principle.*

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NOMOGRAPHY;

OR

THE ART OF INDITING LAWS:

NOW FIRST PUBLISHED FROM THE MSS.

OF

JEREMY BENTHAM.

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*** The MSS. from which the following work has been edited, bear a variety of dates, from 1811 to 1831. During that period, and the subsequent interval, a few improvements have been made in the preparation of British Statutes, the most important of which is perhaps the introduction of the interpretation clause. There has been, however, up to the present time (January 1839), no such general alteration, as to render the remarks in the following pages less applicable to the subject, than they were at the time when they were written. It deserves to be noticed, however, that the subject has at last attracted the attention of Government. In August 1838, a plan for the general amendment of the system, prepared by Mr Arthur Symonds of the Board of Trade, accompanied with specimens and other documents, and termed, "Papers relative to the Drawing of Acts of Parliament, and to the means of insuring the uniformity thereof, in language, in form, in arrangement, and in matter," was laid before Parliament by command of her Majesty. The principal amendments recommended by Mr. Symonds are — The contents of each section to be placed across the line, and not to contain an abridgment of the section, but a mere indication of its subject-matter. Each section to be divided into paragraphs, and each paragraph into sentences, so that each sentence may have but one enacting verb. Each paragraph to be numbered and titled, and each sentence to have a sub-title. The general title of each section, and the respective titles of paragraphs, and sub-titles of sentences, to be printed in their order, as an analysis of the act, either at the beginning or the end, and so distinguished by figures and difference of type, that each indicates by its form and position the part of the act embraced by it. Authority to be given to a body of persons to frame regulations, for the purpose of obtaining uniformity in statutes. A public officer to revise all statutes, and see that they conform with the regulations. Responsible officers appointed for several departments, each to revise the statutes connected with his department, and those portions of other statutes which incidentally affect it. A brief mode of referring from one statute to another. An authoritative classed index or catalogue of the whole Statute Law.— *Ed. of this Collection.*

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OF NOMOGRAPHY.

CHAPTER I.

THE SUBJECT STATED.

Law being the denomination by which, in the English language, designation is made of a portion of discourse by which expression is given to an extensively applying and permanently enduring act, or state of the will, of a person or persons in relation to others, — in relation to whom he is, or they are, in a state of superiority, — and the Greek word *nomos* being the word which corresponds to the English word *law*, the appellation *Nomography* might be given to that branch of discourse which is employed by a *superior*, to the purpose of giving direction to the conduct of a corresponding inferior.

In the present work, the term nomography will be employed to distinguish that part of the art of legislation which has relation to the *form* given, or proper to be given, to the *matter* of which the body of the law and its several parts are composed: — the *form*, in contradistinction to the *matter*, and in so far as the one object is capable of being held in contemplation apart from the other.

We shall proceed to consider — 1. The relations which nomography bears to the government of a private family — to logic, to a pannomion or universal code of laws, to proposal and petition, and to private deontology; 2. The ends in view in the case of nomography; 3. The imperfections to which it is exposed; 4. The remedies for those imperfections; 5. The subject of language; 6. The perfections of which the legislative style is susceptible; and lastly, The forms which enactments may assume.

CHAPTER II.

RELATIONS.

§ 1. *Relation of Nomography to the government of a private family.*

By Nomography, as has just been observed, is understood the art and science by means of which, to the *matter* of law, expression may be given in such sort as to maximize its conduciveness to the *ends*, whatsoever they may be, which the legislator, whoever he may be, may have in view.

Of nomography, the subject-matter is matter of law — the matter of the laws which have place and are in force, or are destined to have place, in the political community in question.

Matter of law is the result of expression given to the will of a person, or set of persons, having power to produce pain on the part of the person or persons at whose hand compliance is thus called for with the will thus expressed.

On each occasion, the matter of law which is uttered, consists, and is composed of, either an entire law, or a portion of such matter, less or greater, than an entire law.

For understanding the nature of any portion of matter which is less or greater than that of an entire law, it will be necessary to understand what that portion of matter is, which is neither more nor less than the matter of an entire law.

An entire law may be defined, a command emaning immediately, or through the intervention of some subordinate authority, from the supreme authority of the state in the political community in question — the political community of which it is a law.

In the great and all-comprehensive family of a political state, a law is — that which a command is in a private family — a command directed by the head of that same family to the members of it, or any one or more of them.

But, to be productive of any of the effects intended by it, the law of the legislator requires an appendage, which, for the production of its effects, is never needed by the head of a private family. With reference to the law just mentioned, this appendage may be styled the subsidiary law: of this subsidiary law, the business and object consist in the presenting to the party or parties subject, inducement directed to the purpose of producing on their parts compliance with the principal law.

And here, then, we have existing on each occasion, in necessary connexion with one another, two distinct species of law; namely, 1. The principal, or say the direction-giving; 2. The subsidiary, or say the inducement-giving law.

These distinct species of laws are addressed to two different classes of persons: — the direction-giving law is addressed to the person or persons at whose hands compliance is constantly looked for in the first instance; — addressed always to a person, or set of per-

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sons other than the above, is the subsidiary, or say inducement-giving law.

This person, or set of persons, is different, according as the inducement employed by the lawgiver is of the nature of evil or of the nature of good.

If it be of the nature of evil, the inducement is styled punishment; and the sort of person to whom this subsidiary law is addressed is the judge: and the act which he is calculated to perform, in the event of non-compliance with the will expressed by the principal law, is an act of punishment — an act to which exercise is given by producing evil, or say pain, on the part of him by whom compliance with the will expressed by the principal law has failed to be made.

For giving effect to a command emaning from the head of a family, and addressed to the other members of it, one or more of them, — no subsidiary law, no inducement-giving law is necessary.* Why? Because in the bosom of a private family, no such functionary as a judge — no functionary distinct from the lawgiver, has place. Here in the head are necessarily connected the two, in themselves mutually distinguishable functions of the lawgiver and of the judge.

Of this difference another consequence is, — that in a private family no portion of the matter of law, no portion less than an entire law, no such thing as a *fragment* of a law, has place: — peculiar to the great family of the state is the existence of this *fragmentitious* matter, the conception of which will be seen to such a degree complex, and in so high a degree productive of difficulty and complexity.

§ 2. *Relation of Nomography to Logic.*

The intellectual — the volitional — and the active; — into these three branches the whole texture of the human mind has, for some purposes, on some occasions, been considered as divided:† the intellectual including perception, knowledge, and judgment; — the volitional, designated by the one word *will;* — and the active, by which execution and effect is given, as far as depends on the individual, to the choice formed, or, so to speak, the laws enacted by the will.

For these two thousand years and more,‡ the branch of art and science which undertakes to give direction to the operations of the understanding, has been in existence; and *logic*, a name derived from the Greek, is the appellation by which it has been denominated.

In nomography, as the branch of art and science is itself new, the name of it cannot, it is manifest, be otherwise than new, — new the thing signified, new of course would be any and every oral *sign* employed for the signification of it.

In the field of art and science a vast space has been discovered, and this of nomography is the branch of art and science which has been invented for the filling of it up.

If to the operations of the understanding, by appropriate rules direction is capable of being given to advantage, with no less advantage may it be given to the operations of the will, and the expression and method given to these same operations.

By the light of analogy, the instructions which have been given on the subject of the logic of the understanding, may be found applicable, with more or less fitness, to the logic of the will.

In common to both branches of logic belongs that portion of matter, which in a work on the logic of the understanding, may be termed the *tactical* part; peculiar to the logic of the will is that part of the logic of the understanding which may be termed the argumentative, or say, the polemic part.

§ 3. *Relation of Nomography to the Pannomion, Matter and Form.*

Matter and form — these two elements, or say elementary ingredients, enter into the composition of every law, and of every particle of matter that enters into the composition of a law, or of a portion of the matter of law.

Under the head of matter are comprehended the ideas to which expression is designed to be given, — the ideas, or say the things that require to be signified: — by the form, understand the signs by means of which these same things are signified — the words, and combinations of words, by which expression is given to those same ideas.

By a pannomion, understand the entire mass of the matter of law which in the country, or say, political state in question, has the force of law: — a mass by which, when that extent is given to it which it is capable of having, and ought to have, the whole field of law and legislation is comprehended, and the whole surface of it, as it were, covered.

To the head of nomography — a denomination by which title is given to the present work — belongs the consideration of what belongs to the *form of a law*, or of any portion of the matter of law, as above.

Expression and *method* — under one or other, or both together, of these denominations, may be ranked and included whatso-

* Set the loaf on the table; — put coals on the fire; — open the window: — in these commands may be seen so many examples of the laws of which a private family is the scene; — and in seeing these laws, what will also be seen is the integrality of their character.

† For the several distinguishable faculties perceptible in the mental frame, consult *Chrestomathia*.

‡ On this subject the most ancient treatise which has reached the present time, is, under the name of Logic, to be found among the works attributed to the great philosopher Aristotle.

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ever consideration belongs to the *form* in which a portion of the matter of law is capable of being clothed.

By expression, understand the words and combinations of words, by the aggregate of the signs of which the matter of the law is signified.

By the method, understand the different groups, or say *assemblages*, in which these same signs are put together, and the order in which these same groups, and in each group the words of which it is composed, follow one another.

§ 4. *Relation of Nomography to proposal and petition.*

Superiority — equality — inferiority: — between man and man, in the scale of power, these three are the degrees which have place. Addressed to an inferior, a discourse expressive of the will of his superior, possesses the character and effect of a law: addressed to a superior, a discourse expressive of the will of an inferior, presents itself in the character of a *petition:* addressed to an equal, a discourse expressive of the will of his equal, presents itself in the character of a *proposal.*

A requisition agrees with a law, in trusting to power for compliance with the will expressed by it: — it differs from a law, in that it emanes not immediately from the superior power in the state, nor even necessarily from any one of the constituted authorities: for compliance with the will expressed by it, however, it places its ultimate reliance on the supreme power in the state; forasmuch as on this supreme power it is that all other power depends for its existence.

A *request* differs from a petition no otherwise than that, in the case of the request, the place of the superior in the scale of power is not so high — the place of the inferior not so low — as in the case of the petition.

Altogether free from that complication which has place in the case of a law, are a proposal and petition. Why? Answer — Because in neither of these cases is there any place for that subsidiary law, the need of which has been brought to view in the case of a law: there is no punishment in the case — no reward in the case; — no functionary by whom eventually, to wit, in the case of non-compliance, the *punishment* — no functionary by whom eventually, to wit, in the case of compliance, the *reward*, is to be applied.

To proposals and petitions, no small quantity of the machinery applied by nomography to the matter of law will, however, be found applicable — the matter of discourse being the matter employed in all three cases. In pursuing our course in the field of nomography, occasion will be seen for bringing to view the imperfections by which the matter of discourse, when applied to the purpose of law and nomography, is liable to be deteriorated — the imperfections by which the will of the supreme legislator is, in a greater or less degree, liable to be frustrated, — and of the remedies which present themselves as applicable to these several imperfections. Of the same imperfections, the matter of discourse, when applied to the purpose of a proposal, will be found susceptible; and accordingly of the same remedies for these imperfections; and so in case of a petition.

But as, neither in the case of a proposal, nor in the case of a petition, either punishment or reward have any place; accordingly, in neither of these cases does any such importance attach, either to the imperfections, or to the remedies, as in the case of a law.

§ 5. *Relation of Nomography to private deontology.*

Strictly speaking, not nomology and deontology, but the pannomion on the one hand, and an all-comprehensive system of deontology on the other part, are the objects between which the relation has place; for, in this respect, the matter of a treatise on deontology stands upon the same footing as the matter of a proposal and the matter of a petition, as above.

But the contents of the pannomion have their form as well as their matter, — and so have those of a treatise on deontology: and now, after the relation of nomography to so many kindred objects has been brought to view, this last presented itself as being necessary to conclude the list.

A portion of the matter of law gives existence to the inducements, or say motives, on which it depends for the obtaining compliance with the will signified and expressed by it; a treatise on deontology gives not existence to any such inducements: what it does — all that it does, is in each case to give intimation of those inducements which actually have place in the nature of man and things, for compliance with the will to which it gives expression.

CHAPTER III.

PROPER END IN VIEW.

§ 1. *General Observations.*

IN the case of nomography, that is to say, in the case of an all-comprehensive treatise on nomography, the proper end in view is the same as in the case of the pannomion; — it being no other than the giving to the entire pannomion, or to that part of it which is upon the carpet, the execution and effect intended by it.

The *form* being in itself an object entirely subservient to the *matter*, thus it is, that this end in view belongs to them both in common, — but always in subserviency to that common end. To nomography belongs an-

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other end, which is peculiar to itself: — this end is the contributing to the utmost, to that prime and leading object, whatever it be, which the matter of the work in question — namely in the present instance the pannomion — has in view.

Come now for consideration the means which in that character are conducive and subservient to that peculiar end.

A circumstance which gives no small increase to the usefulness of these means, and correspondent strength to their claim to notice, is the circumstance of their being in no small extent applicable to discourse in general — to discourse, to what subject soever applicable — and more particularly to all discourse of an *instructional*, or say *didactic* nature.

The immediate secondary end, or say, the immediately subservient means with relation to the primary end of nomography, may be thus expressed: — investing the pannomion, throughout the whole matter of it, in the highest degree possible, with the several qualities or properties conducive to that end, — or say, properties desirable in instructional discourse, thereby maximizing its appropriate aptitude.

Positive or negative — in either of these two opposite forms may these desirable properties be presented to view.

The *positive* is the form in which at a first view they will be apt to present themselves. But upon a closer examination, they will be found internally of a negative character, though clothed and disguised in a positive garb.

Blemishes, *imperfections*, detrimental qualities, or, figuratively speaking, *vices* — by one of these names, in one word, the several qualities opposite to the qualities desirable in this case may be designated: — qualities these, which in proportion as in any portion of discourse they have place, obstruct and stand in the way of the attainment of that same end.

Beneficial, is the epithet by which denomination may be given to the qualities correspondent and opposite to those same detrimental qualities.

Perfections, is the name by which they might have been designated, and would have been designated, but that by this word intimation is given, that in the case of the quality in question, no degree which is beyond and above the degree in which the subject is thus spoken of as possessing it, has place: — and occasion will not be wanting, for bringing to view certain expedients of rather a novel complexion, by each of which more will be done towards investing the discourse with the qualities desirable, than by the bare removal of the detrimental qualities correspondent and opposite to the *beneficial* ones above alluded to.

Under the notion of form are included *expression* and *method*: — but the things themselves are not so plainly distinct from one another, as by these their appellatives they may be apt to appear to be.

Method is the result partly of the choice made of the most general and comprehensive of the terms which the nature of the subject calls into use — of the choice made of those comprehensive terms, and thence of the composition of the several bundles or packets of intellectual objects, which they respectively present bound up together, and of the *order*, the numerical order, in which they are so presented.

When the term *expression* is employed, the subject in question consists of a particular portion of the matter of law, which on the occasion in question, is considered in itself only, and without reference to any connexion it may have with the whole, or with this or that portion of the vast aggregate mass of which it forms a part.

In proportion as the plan or scheme of nomography pursued in any body of law stands clear of, or is sullied by the imperfections or vices incident to the form in which a quantity of legislative matter is capable of being presented, it will be *apt* or *inept*.

But although the form be the source to which the several vices or imperfections of which a body of law is susceptible, in respect of its *form*, may be referred, yet the matter also becomes the seat of them; inasmuch as in proportion as, considered in respect of its form, the rule of action is seen to be characterized by these imperfections, it is through their influence seen to be, in respect of its matter, less adapted to its ends than it would be if pure from them.

§ 2. *Nomography, its general end — relative notoriety.*

Legislation is a practical operation, having on each occasion a practical object, — viz. the attainment of a practical end. Be that end what it may, — whether matter or form be considered — the manner in which on any occasion the task is executed, will be perfect in proportion as it is conducive — imperfect in proportion as it is unconducive or obstructive with relation to the attainment of that end.

Considered in relation to the matter of the law itself, the end of nomography admits of an infinity of diversifications and ramifications, none of which belong to the present purpose.

Considered in relation to *form* — in relation to the *form* given, or to be given, on each occasion to that portion of the matter of law which on that occasion is the subject of consideration, — on each and every occasion, one and the same object will be found to be that which on every occasion it will be incumbent on the legislator to set before him, and apply his endeavours to the attainment of; and that object, — notoriety — relative notoriety.

Whatsoever good effects the portion of law

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in question may, in virtue of its matter, be intended or calculated to produce, the production of those effects will depend, in the instance of each individual on whom the law calls for his obedience, on the hold which it has happened to it to take upon his mind: viz. in the first place, upon the circumstance of the fact of his being apprized of the existence of the law; of the general matter of fact, viz. that on the subject in question there exists such a thing as a portion of law: in the next place, upon the degree of correctness and completeness with which, as often as any occasion comes for acting in obedience to, or in any other way in pursuance or consequence of such portion of law, the matter of it is present to his mind.

To the production of any bad effects, no such notoriety is, in the instance of any portion of law, in any degree necessary.

For a man to be put to death in due course of law, for non-compliance with this or that portion of law, it is not by any means, in any case necessary, that either the matter of it, or the fact of its existence, should ever have reached his mind. On the contrary, whosoever they be to whom it is matter of satisfaction that men should be put to death in due course of law (and these, more especially among English judges and other English lawyers, are many,) the greater the extent to which they can keep from each man's mind the knowledge of such portions of law to which, on pain of being put to death for disobedience, they are called upon to pay obedience, the greater the extent to which they can administer this satisfaction to their minds; and if the portions of legal matter to which this result is attached, had for their object the administering of this satisfaction to those from whose pens they issued, they could scarcely have been rendered in a more effectual degree subservient and conducive to that end, than they have been rendered by the form into which the matter of that, and all other parts of the English law have been cast.

True it is, that before any man can be put to death, or otherwise vexed for non-obedience to any portion of law, what is necessary is, that some person — nay, that divers and sundry persons, should be apprized, not only of its existence, but its contents; forasmuch as a man of ordinary prudence, such as are all those who are in the habit of taking each of them a part in an operation of this sort, will not engage in any such operation except in the persuasion, well or ill grounded, of his being warranted in so doing, if not by the tenor of any real law, at any rate by the feigned tenor or purport of some imaginary law or rule of law, which for his justification and protection will be attended with this same effect.

But when the bearing a part in the putting of men thus to death, is of the number of those acts by the performance of which men are called upon to manifest their obedience, the production of an effect of this sort is not among those results which generally, openly, and avowedly, at least by the legislator, are held up to view in the character of the objects or ends in view ultimately aimed at: ultimately and absolutely good a result of this sort is not generally (for even here there are some exceptions) declared to be; relative, and that alone, is the term employed in giving expression to the point of view in which any such appellative as *good* is spoken of as applicable to such a subject: — that A should be put to death is good, is maintained Why? That B and C may, without being put to death, abstain from the commission of acts of the sort of that, for the performance of which A is thus ordered to be dealt with.

These things well considered, it will be manifest, that whatsoever bad effects are capable of being produced by a portion of law, without its being *known* to those on whom, in the first instance, it calls upon for their obedience, yet as to any effects which, with relation to the community in general, can upon the whole bear with propriety any such appellative as that of good effects, its efficiency in relation to these good effects will depend upon the degree of efficiency and perfection with which, on the occasion in question, it has happened to it, or to the purport, and thence to the tenor of it, to have presented and fixed itself in that person's mind.

§ 3. *Nomography — its particular ends; — correspondent to the avoidance of the obstructions to Notoriety.*

Such being, in the business of nomography, the general end in view, — such being the object proper to be aimed at upon all occasions and in all cases, what are the means best adapted to the attainment of that end?

The answer is — the avoidance of the several modes of imperfection, of which, in point of expression and method, the style of legislative penmanship is susceptible.

For the attainment of this end, make your meaning known and understood by every person of whom you expect that he should act in consequence. Thus simple is the general rule, that in and by it, it should seem as if indication were given of everything applicable in the character of a means towards the attainment of this end.

On the sort of occasion here in question, is it really your wish that what you give as the character of the expression of your will — the real character and purport of such your will — should on each occasion on which action is called for on the part of those you have to deal with, be borne in mind? If so — if such be really your wish — you will act

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on this occasion, as on every other occasion which presents itself in ordinary private life you are wont to act towards those with whom on those several occasions you have to deal.

In dealing with these your fellow-subjects, whose concerns upon a larger scale are committed to your management—these fellow-subjects, for whom, as well as over whom, in the character of their master, and agent, and trustee, you act—you will, in this particular at least, deal with them with the same simplicity and sincerity as that with which, when calling for obedience on the part of your own children, or your own servants, you address yourself to any of your own children or servants.

On each occasion, when addressing yourself to those who are subject to your power, for your own ends you call for obedience, you speak intelligibly,—you are understood accordingly, and you obtain what you desire. When, for ends of a public nature, for the use and benefit of the community in general, you call for obedience,—here too the language is equally open to you—the ordinary means of intercourse are equally open to you: apply the language with the same simplicity and sincerity to its purpose—apply those means of intercourse in like manner—speak intelligibly to those to whom you speak—you will be understood accordingly: convey into the hands of each person, that which, for his complying with your desire, it is necessary should reach them, and be found there,—do this, and here too, for the like causes, and with equal certainty, you will have your desire.

Such is the manner in which in all cases, if he would compass the ends of language, a man must act and speak,—this is the manner in which, as often as for his behoof a man seeks to obtain obedience, he does act and speak,—this is the manner in which, if he be a man of law employed by government, under the notion of his seeking to obtain obedience from this or that part of the community, for the use and behoof of the whole community, he never has yet spoken—he never does speak.

On the contrary, all the imperfections into which, on the occasion of the communication holden by him with any of those to whom, for the purpose of obtaining obedience for his own use and behoof, it can ever happen to his discourse, in consequence of this or that instance of accidental oversight or involuntary weakness, to exhibit here and there the marks of, in any the slightest degree, and at any the longest intervals,—all these on every occasion on which it happens to him to hold communication with any of those to whom, for the purpose, or professed purpose, of obtaining obedience, for the use and behoof of the whole community, to address himself, are with anxious care, study, and undeviating regularity, displayed and accumulated, each of them in a degree of plenitude and consummation of which on any other occasion never would the utmost industry of man be able to discover any example.

Hence it is, that for the purpose of showing in what manner, in respect of expression and method, portions of the matter of law ought to be penned—in what manner the attainment of the universal end of language and verbal intercourse ought on this occasion to be aimed at—all that can be done is to look out for, and collect together under heads, as faults to be avoided, the several vicious peculiarities—in a word, the several imperfections, of which examples are to be found in the language habitually employed, and the course taken in other respects by the framers of English statute law—including in this catalogue as well those into the manifestation of which men are now and then seen on other occasions to be betrayed by casual oversight or involuntary weakness, and those which on this occasion are the result of strenuous attention and anxious imitation and observance.

In a word, to show in what manner aws and portions of laws ought to be penned, nothing less is requisite, nothing more is possible, than to show in what manner they have hitherto been penned; and this to the end that in future the manner in which they are penned may, when compared with the manner in which they have hitherto been penned, be seen to be as unlike as possible.

Proceed we now to exhibit such a catalogue of these imperfections as a diligent research made for this purpose has succeeded in bringing to view. So many different modes of imperfection as are to be found exemplified in the composition of English statute law, so many particular objects, which in the course of his travels over this field the legislative draughtsman ought to have constantly in view as so many stumbling blocks, to the avoidance of which his anxiety and industry ought on every occasion to be kept directed.

§ 4. *Imperfections adverse to the end of Nomography classed.*

Method and expression taken together, the imperfections of which a mass of law considered in respect of its *form* is susceptible, may be distinguished into those of the first order, and those of the second order.

To the first order may be referred such imperfections as are so in themselves, or rather with reference to those objects which may be seen to be the immediate ends of all discourse—of discourse considered in a general point of view—and consequently of discourse considered with reference to the

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particular objects or ends which are in view in the case of the particular sort of discourse — viz. legislative discourse — which is here in question.

Under the head of imperfections of the second order, may be placed such as are so, no otherwise than with reference—or at least such as are so with reference — to the imperfections of the first order — viz. in as much and in as far as each one of these imperfections of the second order is conducive to some one or more of the imperfections of the first order; — *i. e.* conducive to the investing the discourse into which they enter, in a degree more or less considerable, with some one or other of the vicious qualities designated by the denominations by which the imperfections of the first order stand respectively expressed.

§ 5. *Imperfections of the first order enumerated.*

The imperfections, vicious qualities, or vices of the first order, of which a mass of law considered in respect of its form is susceptible, seem reducible to three heads: — viz. 1. Ambiguity; 2. Obscurity; 3. Overbulkiness.

1. *Ambiguity* is where the effect of the expression employed is to present in conjunction divers imports, in such sort, that though to the individual mind in question it appear clear enough that in one or other of them is to be found the import which by the legislator was intended to be conveyed, yet which it is that was so intended to be conveyed, is matter of doubt.

2. *Obscurity* is where, of the expression employed, the effect is, for the present at least, not to present any one import, as that which by the author or authors of the portion or portions of law in question, was on the occasion in question intended to be conveyed.

In the case of ambiguity, the mind is left to float between two or some other determinate number of determinate imports: — in the case of obscurity, the mind is left to float amongst an indeterminate, and it may be an infinite number of imports. Obscurity is ambiguity taken at its maximum.

3. *Overbulkiness.* Ambiguity and obscurity are imperfections, capable each of them of finding its seat in any the minutest part of a mass of the matter of law: overbulkiness is an imperfection not capable of being brought into existence but by the accumulation of a large number of such points.

Supposing the bulk of the mass swollen to a certain pitch, — notoriety, the relative notoriety in question, finds in this quality of the mass, a bar of the physical kind absolutely insuperable. The powers of no human mind being adequate to the sustentation of the whole of such a burthen, portions of the mass, more or less considerable, must with relation to every individual without exception be, to any influence which it is possible for them to exercise on his conduct, as if they had no existence — be with reference to him completely non-notorious.

Whether this non-notoriety shall be, as at present, an enormous evil, or no evil at all, depends upon a very plain distinction — a distinction so obvious, that in the case of a man to whom the law had never presented itself in any other character than that of a source of opulence and power, to men of the profession, — some care, attention, and vigilance would, one should think, be necessary to enable a man to avoid seeing it.

Overbulkiness* may to this purpose be distinguished into absolute and relative. *Absolutely* speaking, the imperfection of overbulkiness may be ascribed to a body of legal matter, when, taken in its totality, the bulk of it is too great to admit of its being at all times effectually present to the minds of all persons, who in point of interest are concerned in shaping their conduct in conformity to it.

Relatively speaking, the imperfection of overbulkiness cannot justly be ascribed to it any further than as it is so put together, that in the instance of this or that individual, such portions of it, which he is concerned as above to bear in mind, fail, in the whole or in part, of having been presented to his mind, and lying within his reach in such manner as to be at all times completely within his grasp.

In this speculative distinction, the imperfection here in question will be seen to possess a specific remedy, the application of which will be exhibited in detail, when after a fill given of these imperfections, we come to consider of what remedies they may be susceptible. So as each individual have but the advantage and comfort of beholding effectually within his reach — within the reach of his purse, as well as of the mastery of his mind, whatsoever parts he is in any way concerned in point of interest to be acquainted with, the bulk of the whole, how vast soever, is with reference to him a matter of indifference: overbulkiness is not with relation to him among the properties that belong to it.

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* In the session of 1810, the Earl of Stanhope is reported to have stated in his place in the House of Lords, that he had with his own eyes read through the statutes at large from beginning to end. Without much danger of error, it might be affirmed that perseverance (not to speak of time and money) adequate to such a task has not, in the instance of any other individual, professional men included, been realized for at least this century past. After omission of repealed and expired statutes to a vast amount, the present price of the last edition of the statutes exceeds the average annual income of any individual of the labouring classes in England.

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Defectiveness is a species of imperfection, under which a body of law is no less liable to labour, than under that of overbulkiness or ambiguity or obscurity: —accordingly, of the whole field of English law, all that part which, having in the shape of *real* law nothing at all to cover it, is by the all-embracing imposture of the licensed manufacturers of falsehood and deceit construed and taken to be filled up by the imaginary matter of *common* alias *unwritten* law — by so much as is thus considered as covered with *common* alias unwritten law, by so much is the whole mass of English law defective; and the English code no less pre-eminently conspicuous in this imperfection than in respect of any of those others.

But defectiveness, at least when thus fixed and explained, is an imperfection which belongs not to the *form*, but to the *matter* of law — and on that account belongs not to the present purpose.

§ 6. *Imperfections of the second order enumerated.*

The imperfections of the second order, of which a mass of law considered in respect of its form is susceptible, may be thus enumerated: —

1. *Unsteadiness in respect of expression* — when for the designation of the same import, divers words or phrases are employed.

2. *Unsteadiness in respect of import*—when to the same word or phrase, divers imports are attached in different places.

3. *Redundancy* — when of any number of words employed in connexion with each other, the whole or any part might without prejudice to the sense — *i. e.* to correctness, completeness, and facility of intellection — be simply omitted, or others in less number be inserted in the room of them. Redundancy is either curable by simple *omission*, or not curable but by *substitution*.

4. *Longwindedness* — when a portion of legislative matter, the elements of which are in such sort connected with each other, that to comprehend in a complete and correct manner any one part, the mind finds itself under the necessity of retaining within its grasp the whole, is drawn out to such length as to be liable to overpower the retentive faculty of the mind on which the obligation of taking cognizance of it is imposed.

5. *Entanglement* — when propositions distinct in themselves are forced together into one grammatical sentence, and in this state carried on together throughout the course of it.

6. *Nakedness in respect of helps to intellection* — especially if in respect of such as are in general use: — such as division into parts of moderate length, — designation of those parts by concise titles and figures of arithmetic expressive of numbers, for indication of such respective parts — and reference by titles and numbers as above, instead of by general description of their contents.

7. *Disorderliness.*—1. In respect of the arrangement given to the several matters, — whether by including under one and the same name, and thence under the same treatment, matters which, in respect of the diversity of their nature, require each a different treatment;—2. By placing at a distance from each other those which for facility, and clearness, and correctness of intellection, ought to stand contiguous to each other, or near at least to each other: or contiguous or near those which ought to be at a distance;—or, 3. By giving to this or that article the precedence over this or that other, which for clearness or facility of intellection, ought to have been placed before it.

The seats of these imperfections will be found to be either — 1. Words taken singly; or 2. Words taken in combination.

§ 7. *Connexion between the Imperfections of the first and of the second orders.*

On the most cursory glance, a general idea of the manner in which these imperfections of the second order are respectively conducive to the superinducing on the mass the imperfections of the first order, is obtainable without difficulty.

1. Unsteadiness in respect of expression is conducive in the first place to *obscurity*, — because by a change in expression, for the moment a suspicion at least, howsoever removeable, of a difference in point of import, cannot but be produced; — difference of expression being the only means by which a difference of import could, if intended, be announced.

So likewise to overbulkiness, — unless when it happens that the several different locutions employed to designate the same import are all of them of exactly the same length.

2. Unsteadiness in point of import. Of such unsteadiness, ambiguity is the obvious and almost inseparable consequence.

3. Redundancy. How necessarily productive this imperfection is of overbulkiness, is self-evident; and that it is even generally productive of obscurity, and frequently of ambiguity, will be little less so.

4. Longwindedness. Of this imperfection, in proportion as it prevails, obscurity, it will readily be acknowledged, is the necessary, and ambiguity a natural and frequent consequence.

5. Entanglement. Of this imperfection, obscurity is the obvious, and to a certain degree the necessary — ambiguity, again, the not unfrequent, though but accidental, result.

6. Nakedness in respect of the helps, particularly the customary helps to intellection, ambiguity and obscurity are the imperfections of the first order, to the production of

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which this imperfection of the second order is most obviously subservient. In the production of overbulkiness its efficiency is still more constant and powerful, and little if at all less obvious. That which with these ordinary helps might be expressed by a figure or two, with or without a word or two, requires, when destitute of them, always a multitude of words, sometimes as many as would suffice to fill a moderate page. By the figure or two, with or without a word or two, the object would be effected in perfection, without of either ambiguity or obscurity any the slightest shade. By the page, if it be compassed at all, the object is never compassed without considerable danger of ambiguity and of obscurity, or constant and most troublesome abundance.

7. Disorderliness. To a general conception it can scarcely be otherwise than sufficiently obvious, that of all the several imperfections of the first order, viz. ambiguity, obscurity, and overbulkiness—disorderliness in all its various modifications, will in proportion to its intensity be a perennial source.

But the most productive form in which it can exist, is that which it assumes by confounding together into one immense chaos the several portions of the matter of law, each of which would on examination of its nature be seen to be, in respect of the demand it presents for cognition and notification, confined to a few classes of persons, of each of which the proportion would not amount to more than the two or three hundredth or thousandth per centage of the whole.

Of the species of nakedness here in question, the only example to be seen — the only example discoverable in the field of law — the only example to be found in the world of letters, in the civilized part of the world, is that which is afforded by English statute law.

It required the union of professional industry and ingenuity with supreme power, to create and preserve, in the country that claims in respect of psychological endowments of all sorts, intellectual and moral, the superiority over every other, a mode and habit of literary intercourse between governors and governed, so peculiarly and manifestly adverse to every honest purpose.

As to the other modes of imperfection — including the three of the first order, and the seven of the second order — though in this same system of law these also are found signally prominent, yet it is only in degree, and not in specie, that they are peculiar to it.

§ 8. *General depravity of the style of English statutes.*

For bringing to view and summing up the imperfections of English statute law, — the language employed for the purpose of legislation by English lawyers, no more is requisite than to bring to view and sum up the points by which it is distinguished from the ordinary language of the multitude. Wheresoever it is seen to differ, it will be seen to differ to its disadvantage: — peculiar absurdity the immediate effect — peculiar mischief the result.

This distinction from the ordinary language of the multitude is peculiar to the language of English statute law: foreign laws are clear from it.

It has been among the devices of lawyers to connect with everything that is justly dear to English hearts, the absurdities and the vices in and by which they reap their profit. Fiction—the vice which they are not ashamed to avow and magnify under that name — fiction has never been either more or less than lying, for the purpose of extortion and usurpation: — yet men who ought to have known better, have not been ashamed to stand up and speak of fiction as the foundation and efficient cause, *causa sine quâ non* of everything that is most valuable in the fabric of the constitution, and the texture of the common law.*

Lying the foundation — the *causa sine quâ non*, of what is most excellent in law! In what sink of folly and wickedness shall we look for the root of so mischievous a paradox? As if wrong could be converted into right at pleasure by the mere telling of a lie!

Without lies in their mouths, lawyers would not have been suffered to do the mischief they have done: — without lies in their mouths, they would not concur in doing what little good their own particular interest suffered them to concur in doing. But is it to the vice, that the good which they were so forward in employing it about, is to be ascribed? When James was driven from his throne, English lawyers refused to set their hands to the work, unless Parliament would join in the notorious lie, that he was averse to sit on it any longer. This lie,—was it either necessary, or of any the smallest use? In Scotland, no such lie was told, and James was not less effectually expelled from the Scottish throne than from the English.

He had made a bargain with somebody — a bargain to govern well? — he had made no such bargain; he had made no bargain at all about the matter. A bargain necessary to constitute a sufficient reason for good government! a sufficient reason for seeking security against mischief and abuse! What if he had made a bargain to govern badly? Would it then have been the duty of the king to afflict the people with bad government?—would it have been the duty of the people to submit to it?

* See one of Lord Grenville's speeches on the regency question, January 1811.

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As well when good, as when mischief is to be done, advantage is taken by them of the public weakness, to cram into the work, in as large a proportion as possible, that mixture of vice and sort of absurdity of which they are the compounders; and to this compound of mischief they ascribe the honour of whatever good is done.

With as much truth, and as much reason and sincerity, might a man slip in, along with the memorials usually buried with the first stone of an edifice, a bridge, or a court of justice,—a rotten egg and a rotten apple, and then set up proclaiming the virtue of rotten eggs and rotten apples. Oh rare rotten eggs! Oh rare rotten apples! No bridges without rotten eggs! No justice without rotten apples!

A rotten egg or a rotten apple is quite as necessary and conducive to the stability of a bridge for the convenience of passengers, or of the edifice in which justice, or what is called by that name, is to be administered, as fiction, legal fiction, ever can have been or ever can be to any good work that may be attempted with it.

But though it is useless to expect that these imperfections will be acknowledged by the long-robed penners of the English statutes, regard for *his* own *intellectual* reputation should suffice to prevent the man of law from professing himself not fully conscious of the repugnancy of his style and method to every useful and honest purpose and design of language. The English lawyer, more especially in his character of parliamentary composer, would, if he were not the most crafty, be the most inept and unintelligent, as well as unintelligible of scribblers. Yet no bellman's verses, no metrical effusion of an advertising oil-shop, were ever so much below the level of genuine poetry, as when, taken for all in all, are the productions of an official statute-drawer below the level of the plainest common sense.

§ 9. *Effects of these imperfections on the faculties and operations of the Legislator himself.*

The mind of the subject is not the only mind on which these imperfections in the present established system of legislative penmanship exercise their baleful influence:—another mind, on which their influence is but too conspicuous, is that of the legislator himself. True it is, that at the upshot, it is on the subject that this branch of the mischief falls, and with no less weight than does the other.

"*Quidquid delirant reges plectuntur Achivi;*"

—but when on its way to the passible faculties of the mind, of which the station is in the lower place, it impinges upon the agible faculties of the mind, whose station is in the higher place, the mischief assumes a different complexion, and requires altogether a different description to bring it to view.

Not that, in thus changing its place, the mischief, meaning always the ultimate mischief, undergoes any very considerable change either in its nature, or thence in its proper name. On the part of the law, non-cognoscibility, or that which comes to the same thing, unintelligibility on the part of the mind, for the cognizance of which the law is destined or pretended to be destined;—of these results the ultimate mischief is in both cases constituted. In the one case, the mind thus darkened is that of the individual, the subject-citizen:—in the other case, it is that of the legislator himself—the very author of the darkness.

By the same causes by which the mind of the individual is prevented from extracting anything like clear conception out of the confused mass of disorderly matter shot down before it, the mind of the legislator is operated upon in the same way and with the same effect. The legislator, and not the individual, is indeed the person by whose feet the dust is raised; but when it is once raised, and all the time it is raising, his own eyes are not less effectually prevented from enabling him to see his way through it, than the eyes of those upon whose back his commands and prohibitions, burthens and restraints and punishments, and all his snares and entanglements, are rained down.

Hence, not only is the individual prevented from knowing and understanding what on this and that occasion the meaning of the legislator is, or was when he wrote,—but in a certain sense the legislator is himself prevented from understanding what he himself is doing while he writes. What may or may not have happened to him is, to know what his own meaning, wish, and intention is at the time:—but that which is sure to happen to him is, not to know what his own wish and intention would have been, if throughout the whole field of action of which he has taken possession, his conception of his subject had been at the same time correct and complete to the degree in which it ought to have been so,—and might have been, and perhaps would have been, if the obstructions which the accustomed system of disorder raised up before him as he advanced had been removed, and his intellectual faculties had received the comfort of those helps, which, on every other part of the field of mental action, are framed, communicated, received, and employed in such salutary abundance.

Of the darkness and confusion of mind of which the effects are so generally conspicuous in the works of English legislators, abundance of examples might be produced. In the examination of one statute, I have found a multitude of such gross palpable grammatical

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errors, as scarcely any schoolboy, who had made his way to the upper form of any school in which no language was taught besides English, would see himself convicted of without shame.

The penman, whoever he was, did he not know better? No supposition could be more palpably untenable. In the works of Parliament, and nowhere else, are marks of ignorance, thus inconsistent with the most ordinary education, to be found. On any other subject, on any other occasion whatsoever, it may be affirmed with confidence, that not one of them would have been exhibited by this same hand. Scattering words and phrases blindfold, through a wild wilderness of words scattered in the same track by preceding travellers, no wonder that at every other step he should have been losing his way. On no other ground would even these very feet have lost their way. Why? Because on no other ground has any such wild wilderness been raised up.

Innumerable are the oversights that will be seen exhibited in this fertile field — innumerable the instances in which the legislator will be seen to have either fallen short of, overshot the mark, or gone beside it — innumerable the instances in which, in case of non-compliance, execution of the law upon the disobedient would be found impracticable.

Numberless the blunders of all sorts and sizes: — and by what cause produced? By the system of discord which the legislative draughtsman found pre-established, that confusion had first been established in his own mind, which his effusions propagate, and thicken, and increase in other minds.

But the more troubled the waters, the more productive the fishery: — and since such is the effect of error and imperfection, that all the loss goes to the account of others, while all the profit, and that a boundless one, goes to his own account, to expect that by an official lawyer, or any one who hopes to become such, any proposition for the amendment of the legislative style should be regarded with the marks of any more favourable sensation, or any other reception than that of inward horror and outward contempt, would be an expectation about as reasonable as that an individual, who is paid by a per centage on the amount he expends, should be sincerely and unaffectedly desirous of keeping down the amount of such expenses.

CHAPTER IV.

IMPERFECTIONS PRIMARY.

§ 1. *Uncognoscibility.*

OF all the several vices spoken of under the head of imperfections of the first order, the cardinal vice is Uncognoscibility.

Dependent on and proportioned to the notoriety, and hence to the cognoscibility of the rule of action, are whatsoever good effects can have been expected from it: — *notoriety*, reference, viz. being had to the individual occasion on which, in order to be productive of the good effects looked for, it is necessary that an act of the sort of those which stand commanded by it should be performed: — and the converse, in the case of acts prohibited or permitted.

It is only in proportion as it is thus notorious, that a law can be productive of any the smallest particle of good effect. But of bad effect, without any such notoriety, it is capable of being productive in no inconsiderable degree. Such is the case with it, when in a case of penal law, non-observance has for its effect punishment — and when in the case of law non-penal, non-observance has for its effect burthen or inconvenience in some other shape.

On the part of the mass of law in question, *notoriety*; — on the part of him who in some way or other is concerned in point of interest to be apprized of it, *cognition*; — depends partly upon *external* circumstances, such as the operations, if any, that are performed for the purpose of giving it notoriety, — partly upon *internal* circumstances — circumstances constitutive of its internal or intrinsic aptitude for being notified.

Uncognoscibility on the part of a mass of legal matter is a quality which may be referable either to a state of things extrinsic and foreign to the law itself, or to the nature and constitution of the law itself.

In so far as it has its origin in a state of things extrinsic to the law itself, it may be termed uncognoscibility *ab extra*; — in so far as it has its origin in the nature and contexture, the *matter*, or the *form* of the law itself, it may be termed uncognoscibility *ab intra*.

In so far as the imperfection comes under the denomination of uncognoscibility *ab extra*, it is the result of want of promulgation: — deficiency or inappositeness in respect of the operations necessary to convey it to, and fix it in the minds of the several persons, who on one account or another are in point of interest concerned to be acquainted with its existence and contents.

Uncognoscibility *ab intra* may have its origin either in the form of the mass of law in question, or in the matter. In so far as it has its origin in the form of the law, it has its origin in one or other of the imperfections of the first order, — viz. ambiguity, obscurity, or overbulkiness.

Overbulkiness may to this purpose be distinguished into absolute and relative, — relation being had to the persons concerned in point of interest in being acquainted with it.

Overbulkiness on the part of a mass of law is *absolute*, in so far as it cannot be reduced

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by the mere process of distribution, in which division is necessarily included.

When overbulkiness is relative only, it is capable of being reduced more or less by the mere process of distribution as above; — viz. by taking the whole mass and distributing it among the different persons (viz. individuals or sorts of persons) who are concerned in point of interest in different parts of it: — breaking it down into so many distinct portions as there are sorts of persons, each of whom is concerned with one part only.

Whatsoever portion of legal matter has no existence but in the form of unwritten law, has not, properly speaking, any existence. For it is only in virtue of certain determinate words to which it has been consigned, and of which the expression of it is composed, that a portion of law can be said, properly speaking, to have any existence. Without such words, without such *text* or *tenor*, as the phrase is, belonging to it, whatsoever is given as and for a portion of legal matter, exists only by fiction—is a mere figment of the imagination; — and whatsoever has no existence, is effectually and absolutely uncognoscible.

Though on the subject in question there exist not any portion of the real matter of law, a man may be punished, as day by day men are punished, as for disobedience to, or non-compliance with, such law: — but it is not by any such act of power or punishment that a real law can be brought into existence. Punishment is the act of a judge, or any other person who has power to do evil to the party said to be punished: a law is the work of none but a legislator.

In so far as it is in respect of its matter that a mass of law is uncognoscible, it is for want of *visible reason* — of reason either apparent on the face of it, or made known along with it, — or by apt expression annexed to the text or tenor of it.

In this case, so far as regards the matter as above, the intrinsic uncognoscibility on the part of the mass of law will not, it is evident, be absolute and entire; — it is not to every man, and at all times, that an acquaintance with the nature of its contents, and at the same time with the fact of its existence, will be impossible.

But by indication of the reason, if so it be that it have a reason, such an instrument of fixation will be provided, such an anchor for fastening it in the mind, as cannot by possibility be given to it by any other means.

§ 2. *Ambiguity and Obscurity.*

Between ambiguity and obscurity the connexion is close, and almost undistinguishably intimate.

A locution is ambiguous when two significations are presented to view in such manner, that though it be clear to the reader that one of the two was meant by the author to be regarded as his, — yet which of the two it is remains a matter of doubt.

Its etymology considered, by the word ambiguity, if taken strictly, an intimation is conveyed, that of the rival significations in question the number is but two. In the nature of the case, however, as certified by experience, to the possible number of these candidates there are no certain limits. But forasmuch as, for the purpose of comparison, these rival significations may, be they ever so numerous, be taken up, and held in contemplation by pairs, and as the etymology of the word *comparison* imports, it is only when held up together in pairs, and not in any greater number, that of the points of agreement and difference amongst a number of objects — say accordingly between object and object — any such conception as shall be at once distinct, correct, and complete, can generally, if at all, be formed; — on these considerations, be the number of these rival significations ever so extensive, the terms ambiguous and ambiguity may still be employed in speaking of them.

Obscurity may be resolved into ambiguity, or at least the relation of the one imperfection to the other manifested, by considering the mind, as tossed about, as it were, in case of obscurity amongst a number of rival significations altogether indeterminate and even infinite. For, that in the mind of the author in question, be he who he may (he being in his right mind), no meaning whatsoever was at the time of penning the discourse in question present, cannot seriously be supposed. Some meaning or other, then, he cannot but be supposed to have had; — and therefore, till some determinate meanings in a limited number present themselves to the conception, it will remain wandering in infinite intellectual space, the field, abode, and station of an infinite host of meanings.

Sometimes one single determinate meaning will have presented itself — and still, whether that be the author's real meaning may remain matter of doubt. This case will be apt to present itself as belonging to the head of obscurity: — if considered as a case of ambiguity, the doubt must be considered as having place between the determinate signification on the one hand, and an infinite number of indeterminate ones on the other.

In a discourse of this sort, when an instance of ambiguity presents itself, the state of dubitation may be either merely temporary, or ultimate and definitive. And so in regard to the case of obscurity.

In the case when it is temporary, a distinction may be made between the case where, by a view of the context, it is corrected without examination, and the case where to the solution of it examination is necessary: — in

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the first case it may be distinguished by the appellation of momentary — in the other, of permanent.

Of any the slightest and most evanescent degree of ambiguity, even though incapable of being productive of any permanent doubt, the effect upon the mental feelings is unpleasant: it produces upon the mind of the reader a sort of sensation, attended with uneasiness to the mental faculty called *taste*—an uneasiness which seeks vent by stigmatizing the discourse with the imputation of clumsiness or inelegance.

This sort of inconvenience, such as it is, is one that accompanies the imperfection in question, whatsoever be the species and character of the discourse which is the seat of it.

If, though not definitive, the ambiguity be permanent, — to the slight and evanescent uneasiness produced by the inelegance of the discourse, considered in a general point of view as a discourse, is added the more serious uneasiness, the anxiety which depends upon the nature and character of the particular species of discourse here in question, — the anxiety produced by the consideration of the effects of which it may be productive,—which, in the character of a portion of law, it may have upon the interest of the reader, or of some individual, or aggregate of individuals, whose interest has been bound up with his own by the tie of sympathy.

If the imperfection be not only *permanent* but *definitive*, the consequence is, that he is thereby subjected, not merely to the apprehension, but to the danger of some operation more or less prejudicial to his interest (as above explained *) at the hands of the law: *in penale*, to some punishment, or else to some privation to which he considers himself as under a prudential obligation of submitting, lest he should subject himself to such punishment: and so *in civile*, *in non-penale*, in regard to burthen, an inconvenience in the shape of loss, or any other shape.

When the ambiguity is but of the momentary or evanescent kind, take any individual instance by itself, — the utmost evil — the utmost uneasiness producible by it, will in general be a quantity altogether impalpable, too minute to have any claim to regard. But when repeated and multiplied to the degree in which, in the composition of an entire statute, it is capable of being multiplied — of a statute of that figure and bulk which in the English statute-book is so frequently exemplified, even this slight species of imperfection is not incapable of being swollen into a serious inconvenience. Lay upon a man's shoulders a burthen of a certain weight, — it may be composed of an impalpable powder, yet the pressure of it will not be the less grievous.

* See the head of *Uncognoscibility*.

In regard to ambiguity, distinctions productive of practical use may be derived from the consideration of the modifications of which the source or seat of the disease is susceptible.

1. This seat may be in a single term, in a single word, — say *in termino* — *in vocabulo*.

2. It may extend itself over a whole phrase, or collection, or series of words, more or less numerous, taken by itself, — say *in propositione*, or *in contextu*.

3. Its seat may be, not in any single word or phrase, but in any single word or phrase considered with reference to two others; in which case, the seat of the ambiguity is a compound seat — its elementary parts, the three words or phrases taken together, — *in situ*, or *ex malâ collocatione*.

Thus, in the case of a phrase capable of producing the effect of a limitative clause, placed between the other clauses, it may, — how clear soever in itself, — and, moreover, how clear soever each of those two other clauses may be, — be productive of ambiguity, in respect of the doubt to which of the two it was intended to apply itself: temporarily, permanently, or definitively at least, such will be the effect of any such interposed clause, if consistently with apparent common sense, it be in its nature applicable as well to the one of them as to the other.

Of the modes of ambiguity hitherto above brought to view, every discourse, whatsoever be the subject and object of it, is susceptible. To an ulterior mode of ambiguity, discourse, in so far as it possesses the force of law, is liable. This is that which is so apt to have place, when it has happened to the same subject to have been taken in hand by laws of different dates: the question in this case being, this portion of law, in the instrument of earlier date, is it, or is it not, to be considered as superseded by this other portion of law contained in the instrument of more recent date?

To a doubt of this nature, it is only by accident that any interpretation whatever can be afforded by the maxim, *Leges priores posterioribus abroguntur*. The justness of the maxim is above dispute if, on the part of the legislator of posterior time, there existed any such desire as that of abrogating the provision made by the legislator of anterior time, abrogated it is, and must be deemed to be. But any such desire, — had it really any existence in his mind? A desire to any such effect, — was it really his desire? In that part lies the difficulty. The legislator of earlier time prescribes such or such a mode of doing the thing in question; the legislator of later time prescribes another mode a little different. The option between the two modes, — is it to be considered as left or taken away? and if left, to whom left?

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§ 3. *Overbulkiness.*

As in the case of ambiguity and obscurity, so in the case of overbulkiness: the most serious part of the evil, the intensely afflictive, and at the same time all-grasping evil, is resolvable into, and coincides with that of uncognoscibility, viz. the chance which, in the character of a cause, the property in question has, in the instance of this or that individual person, of being productive of that effect, with its disastrous consequences.

The condition in life of the individual in question is a circumstance by which the efficiency of this cause will, it is evident, be subjected to modification, and that upon a long-extended scale.

The man of law is the sort of person on whose faculties, considering the case in the abstract, the species of burthen ought to be found pressing with the severest pressure: in the shape of law, the burthen that presses upon him being the aggregate of all the several burthens that are to be seen or felt pressing upon any other shoulders.

But this being a sort of burthen which, in that profession, presses not upon any man's shoulders any further than in consideration of a more than equal retribution it has been his desire and his pleasure to submit them to it; the consequence is, that when the burthen is the most bulky, the suffering produced by it is, in mathematical language, a negative quantity, — in plain language, real suffering there is none, but more or less enjoyment in its place.

It is to this simple circumstance that the body of the law, taken in its totality, is obviously indebted for its present bulkiness. Such as it is, it is the handiwork of the man of law. While to every other class of men it is, according to circumstances, an instrument of pressure, affliction, ruin, death, — to him, and in proportion as to other men it is productive of these evils, it is an instrument of aggrandisement, of opulence, and power.

No wonder if in every country, and in every age, down to the present moment, the whole force of his faculties have been bent, not to the alleviation of this burthen, but to the working it up to, and keeping it up in a state of the most mountainous bulk, and thence of the most consummate uncognoscibility that, under the spur of mighty interest, human ingenuity on the one part could devise, human nature and stupidity on the other part submit to and endure.

It is not merely by its immediate operation, and in the simple ratio of the magnitude of the mass, that bulkiness on the part of a mass of law tends to produce, and so unhappily does become productive of, uncognoscibility. The more there is of the mass, be it what it may, the more there is of that matter of which ambiguity and obscurity are capable of being found the attributes. Moreover, by the same causes by which his exertions have been engaged in endowing this his work with the most enormous degree of bulkiness possible, by the same causes have they been directed to the object of giving existence, perpetuity, and increase, always in the utmost possible degree, to those other vices.

Though of two bodies of law, each professing to be complete, what may easily enough happen is, that not the greater, but the lesser should, taken in its totality, be more ambiguous and obscure, yet nevertheless sure it is, that the greater the bulk of any such mass, the greater, more perfect, and exquisite, is the degree of ambiguity and obscurity which it will be in man's power to plant in it.

Accordingly, not only in the article of bulkiness, but, under favour of it, in the intimately connected articles of ambiguity and obscurity, there will in the field of law be occasion to witness, under favour of such causes as are not to be matched elsewhere, such effects as are alike incapable of being matched elsewhere.

Bulkiness on the part of the body of the laws may be distinguished into *absolute* and *relative*.

Absolutely considered, a body of laws may be said to be inconveniently bulky, when, taking the whole of it in the aggregate, it is considered as pressing in an inconvenient degree upon the faculties of the whole body of the members of the community taken in the aggregate.

Relatively considered, this or that part of the body of the laws may be said to be bulky in an inconvenient degree with relation to this or that part of the whole body of the members of the community considered as loaded with it, when, although if to each one were presented the whole portion with which on one account or other he is concerned, — and thence concerned to be acquainted with, — and no more, the case might be, that the pressure of such portion might not be so great as to be inconvenient to him; yet the case being, that in addition to that portion with which he is concerned, such person is burthened with a quantity of matter, and that to a vast amount, with which he is not concerned, — hence it is, that in a relative sense, the whole aggregate of the body of the laws is, with relation to the whole body, composed of all the members of the community taken together, in a highly inconvenient degree bulky and oppressive.

From this theoretical distinction between bulkiness in an *absolute*, and bulkiness in a *relative* sense, results a practical expedient, such as in the character of a corrective remedy will be found of sufficient efficacy to reduce, in the instance of each individual, the

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amount of the matter pressing upon his shoulders, so as to make it no longer, in the instance of any one individual, a source of considerable sensible inconvenience.

The principle or rule of division, or distribution, is the name by which this practical expedient may from henceforward be distinguished; and the method to be pursued in applying it throughout to the best advantage, will be the subject of consideration in a succeeding Chapter.*

CHAPTER V.

EXPLANATIONS RELATIVE TO THE IMPERFECTIONS OF THE SECOND ORDER.

§ 1. *Unsteadiness in respect of Expression.*

THIS imperfection has place when, and in the degree in which, for the conveyance of one and the same idea, or portion of an idea, different locutions, whether single or many-worded, have been employed.

The imperfections of the first order, to which this imperfection of the second order is indebted for its vicious quality, are ambiguity, or obscurity and bulkiness.

When so it really is, that it is a man's meaning to express two or more different things, difference in respect of the expression is the sole resource; therefore so it is that, for the moment at least, when two different sets of words are observed to be employed, the notion that not one and the same thing, but two different sets of things, are intended to be expressed in and by the use made of these different sets of words, cannot but present itself.

To the production of the inconvenience of overbulkiness, it is conducive rather by accident than of necessity. When so it is that to the expression of one and the same idea a number of different expressions are successively employed, they will naturally be of different lengths, and the difference between the length of the longest that happens to be employed, and that of the shortest of those by which the same sense would be expressed with equal aptitude, multiplied into the number of the times that, in the discourse in question, this bulkiest expression recurs, gives the maximum of the bulkiness which, by means of this imperfection of the second order, is produced by this same bulkiest of the several synonymous expressions.

Thus suppose, that for the designation of the idea in question, a locution composed of two words would suffice: instead of it, in ten places a locution composed of four words is employed; and in ten others, a locution composed of eight words: were the four-worded locution the only one employed in the twenty instances, the quantity of redundant matter would be equal to the quantity of useful matter: were the eight-worded locution alone employed, the quantity of redundant matter would be to the quantity of useful, as four to one.

§ 2. *Unsteadiness in respect of Import.*

Opposite and correspondent to unsteadiness in respect of expression, is unsteadiness in respect of import.

Unsteadiness in respect of expression is, where, for the expression of one and the same idea, or part of an idea, divers words or sets of words are employed: unsteadiness in respect of import is, where, in the compass of the same discourse, to the purpose of denoting divers ideas, or portions of ideas, one and the same word or set of words is employed.

Ambiguity is the primary imperfection, towards the production of which, the tendency which this imperfection of the second order possesses, is sufficiently manifest.

It is only by accident that the species of imperfection here in question has found its way into a mass of English statute law; the soil has no particular attraction for it. Instances of it may, however, occasionally be found.

The following are examples of this unsteadiness in the use of terms:—

1. *Common law*, employed to signify fictitious, judge-made law, as distinguished from real legislator-made law;—

Common law, as distinguished from equity, as employed to distinguish the mode of procedure pursued in the original set of courts, from the mode of procedure in the courts called Equity courts.

2. *Civil law*, employed as synonymous respectively to non-penal, Roman, non-canon, non-military, admiralty, non-ecclesiastical, non-common law. In the first case it denotes, on the part of the enactments in question (real, in the case of statute-made law—fictitious, in the case of judge-made law), the absence of suffering appointed for the purpose and under the name of punishment. In the case of Roman law, and canon law, it is employed to designate the source from which the rule of action, by the enactments (real or fictitious as above) of which it is composed were derived. In the case of military and admiralty law, the occasion on which, and the purpose to which, the rule of action constituted by it is applied.

Thus it is, that under the existing system on the part of the arrangements themselves, and on the part of the language employed, a correspondent inaptitude, all-pervading and most exemplary, has place.

§ 3. *Redundancy of Matter*, i. e. *of Words.*

The imperfection of the first order, to which this imperfection of the second order

* Chapter VI. § 2.

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presents itself at first sight as conducive, is bulkiness.

In the character of a cause of obscurity, and thence to a greater or lesser extent of uncognoscibility, bulkiness will, even when most indispensably necessary, be ever a matter of just regret.

In so far as it is necessary, and has appropriate utility for its justification, the inconveniences that result from it, be they what they may, find their proportionate compensation.

But where redundancy has place, the redundant matter not having by the supposition any part of it any use, it is by the whole of it a mass of mere mischief.

Another imperfection of the first order, to which on a nearer view this same imperfection of the second order will be seen to be naturally and frequently though not constantly conducive, is obscurity.

Be the subject what it may, the more redundant the scheme or plan of phraseology which it happens to an author to take up and set out upon, the greater the probability and danger is of deficiency—relation being had to the scale upon which he has undertaken thus to operate; for the more ample the task which he has set himself to do, the greater is the quantity by which, in his endeavours to execute the whole of it, he is likely to be deficient.

In the case of the English Act-of-Parliament style, the plan and scale of operation being, when compared with any ordinary discourse, by far more copious and more redundantly copious, the probable amount of deficiency receives a proportionable increase.

A little further on, occasion will be taken to give a sort of analytical view of the principal forms in which, in the contexture of an English act of parliament, this imperfection may be seen to exhibit itself.

But it is from the words, and from the words alone, that their import can be collected; and when, as between locution and locution, a difference—any the slightest difference—is observable in the words, a correspondent difference in the intended import can scarcely ever, for the moment at least, fail to present itself to the reader's view as a possible cause of such difference in respect of the words. In a word, in the character of an efficient cause of obscurity, unsteadiness in expression has been already brought to view,—and of unsteadiness in expression, the alternation between redundancy and deficiency is one mode.

§ 4. *Longwindedness.*

Be the nature of the mass of literary matter in question what it may—matter of legislation, or any other portion of it,—it may be said to be longwinded in proportion as the line of words is long and protracted, through which the conception has to travel before it can find a resting place.

In the case of an English act of parliament, for example, the whole mass is to appearance cast into *sections*, in each of which the elementary parts, the words, are in such sort connected, that under pain of not comprehending any one part, the reader finds himself under the continual obligation of gathering up the matter as he advances, and retaining in his mind the whole at one grasp, before he can make himself, or feel as if he had made himself, master of every part of it.

One imperfection of the first order, to which this imperfection of the second order is conducive, is again obscurity.

To the physical eye, the deeper and more protracted any medium is, through which it happens to any object to present itself to view, the deeper the obscurity in which the object appears to be involved: to the mental eye, in like manner, the longer the paragraph, the greater the difficulty of perceiving its meaning, and on all occasions penetrating to the end of it and all through it: to shift the metaphor, the greater the number of the words, the greater the chance that, sinking under the task of picking up the import of them one by one, it may, ere the task is over, let idea after idea drop out of its grasp, and in its anxiety not to lose any, drop more and more, till at last it have lost all possession and command over them, and retain nothing but a dark and indistinct notion of the whole mass, or any part of it,

If mere simple redundancy be of itself a cause of obscurity, longwindedness is a much more powerful one.

As in the case of bodily, so in the case of mental labour—what oppresses a man is not so much the absolute magnitude of the quantity of the work he has to go through, as the shortness of the time he has to do it in,—or rather the quantity which it is necessary for him to go through, before it is in his power to take repose.

In an English act of parliament, in each section the connexion given to the matter is commonly such, that when once the mind has entered upon it, no repose is to be had till it has reached the end of it: no, nor then neither, unless such be the strength of its grasp as to give assurance of its retaining, in a full and distinct point of view, the whole mass of the matter which, parcel after parcel, it had in the course of its progress through the section been taking up.

So much worse than absolute redundancy is longwindedness, that if in any instance, under the oppression produced by longwindedness, it were deemed necessary to seek relief,—relief would in many, and indeed in most instances, scarcely be to be found on any

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condition other than that of adding to the number of the words.

A bad and inconsiderate sort of economy is among the most productive of the causes by which longwindedness in masses of discourse, in sections and paragraphs and sentences, is produced. One predicate, it is conceived, may be made to serve for two or more subjects; and thus two or more substantives, with their respective complements of attributes, are forced under the governance of one verb. But the masses which the pen thus conjoins, the mind must sever, before it can embrace and make itself master of any one of them; nor of any one such fragment of a proposition can it acquire a steady view, on any other condition than that of making it up into a complete one, and accordingly making up within itself the complement of words necessary to that purpose.

Thus it is, that to dispel the obscurity produced by longwindedness, an addition must be made to the absolute number of words: — an addition by the amount of which, if it did not find the original number defective, it would render the mass of matter redundant.

In an ordinary discourse, it may be not easy perhaps to find an instance of a sentence which, labouring under the imperfection of longwindedness, can be cured of it upon any other terms than that of making additions, and those very considerable ones, to the lengthiness of it. Take up a longwinded sentence in which matter for ten sentences is discernible, — take it in hand and break it down into ten short ones, — scarcely will it happen, that for the composition of these short ones, twice the number of words contained in the original longwinded sentence will suffice.

It is perhaps only in lawyers' jargon — it is only in the language of an English act of parliament, that instances are to be found in which, upon the breaking down of a longwinded section into its component members, the aggregate of the words contained in the new-moulded parts shall not exceed the aggregate number of the words contained in the original article. The reason of this will be found in the circumstance, that in such a variety of forms, each section embraces so large a quantity of redundant and peccant matter that may be extirpated, not only without prejudice, but with signal benefit to the sense.*

§ 5. *Complexity or Complicatedness; — whence Entanglement.*

Entanglement is a natural result, when in one and the same grammatical sentence divers logical propositions are involved and drawn out together.†

One imperfection of the first order, to which this imperfection of the second order is conducive, is obscurity.

Even when clear of entanglement, longwindedness, it has been seen,‡ has obscurity for its proportionate result; — but when to longwindedness, entanglement is added, the obscurity, it is evident, will be apt to be increased in a ratio greater than that of the longwindedness.

In the case even of simple longwindedness, the task given to the apprehensive faculty may be greater than it can effectually comprehend and retain within its grasp: the labour of thus holding the matter it embraces, without letting drop any portion of it, may be more than the intellectual faculty of the individual in question is able to sustain; — and when to this labour is added that of unravelling and disentangling the interwoven threads, the mind cannot but be the more in danger of letting go its hold under such a task.

Another imperfection of the first order, to which this imperfection of the second order will, whether constantly or not, be naturally and frequently conducive, is *bulkiness*. As the entanglement runs on, the obscurity thickens

* Of all instruments of longwindedness, the most unmerciful is that which is called a Preamble. It is a sort of excrescence growing out of the head of a section. If it be a part, it never forms any more than a part of a section, or even so much as a grammatical sentence. When the preamble is concluded, the principal part of the sentence is not yet begun.

In one instance which I have observed, the preamble of the act alone contains no fewer than thirteen closely printed pages of Ruffhead's edition of the Statutes; and in all these thirteen pages nothing is as yet said — nothing as yet done. Many a work has appeared in several volumes, each volume containing little if anything more in quantity of words than are contained in that one portion of an unfinished sentence.

In English law, a preamble commences with the word "Whereas," — in French law with the word "*Considerant.*"

Of the two, the French term is the clearer and more expressive. In fact, what the draughtsman requires of his readers, the legislator of his subjects, is *to consider*; — to take and keep under consideration the whole matter of the preamble together; nor that only, but that and the first section at least, that from the preamble the contents of the enacting part may receive that elucidation which in his declared opinion is necessary.

"By myself," says he, "this whole mass of introductory matter was considered, all this whole mass of matter borne in mind at the same time, for the purpose of framing the enacting part; — on you I impose the task of taking and bearing in mind all this elucidatory matter, as you would wish or hope to understand the enacting part."

Such is the task imposed upon the reader in the case of these thirteen enormously filled quarto pages: — in all this immense wilderness no resting place, — no, not so much as a breathing place.

† Examples in prize act 1805, 45 Geo. III. c. 72. High and Vice-Admiralty legislated together.

‡ Section 4, *Longwindedness.*

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— as the obscurity thickens, it attracts more and more the attention of the penman: — fearing lest the mass should grow too involved, and through much entanglement too obscure for use, he sets himself to disentangle it — to point out this or that distinction in the provision meant to be made respecting the subjects thus involved. But as by words it was that the matter was entangled, so it is only by words that the disentanglement can be effected, or so much as aimed at: and thus it is, that while increase is given to *obscurity*, so is it to bulkiness.

§ 6. *Nakedness in respect of helps to Intellection.*

The species of imperfection here meant to be brought to view, is that sort of blemish of which no species of discourse is in its nature unsusceptible, but which in England is in point of fact in a manner peculiar to the discourse of the legislator — to that species of discourse in the instance of which the consequences resulting from it are of the most inconvenient and pernicious cast.

To such a degree has been the success with which in this line of sinister industry the labour and ingenuity of the man of law has been attended, that he has kept in a state of depression below the condition of barbarism, not to say of savage life, that part of the means of communication between mind and mind which has been unfortunate enough to fall into his hands.

Of these helps, the most prominent and obviously necessary examples consist of two connected operations: — the one consisting in the making division of the whole mass of literary matter, be it what it may, into a number of parts of a moderate length,—of a length suited to the conceptive and retentive powers of the description of persons for whose eye it is destined; and the other, in giving to each of such parts a name by which it may be called.

Arithmetic — the humble but useful art and science of arithmetic — furnishes a set of names which possess the advantage of being with equal propriety and convenience applicable to any mass whatsoever, physical or psychological, into whatsoever parts it may be found convenient to divide it; — and these denominations, besides being so universally apt, are at the sametime less bulky than any others that could be devised.

Religion has availed itself of these helps to intellection; and of the assemblage of works of which the sacred volume is composed, each one of any length has been divided into numbered chapters, and each chapter into numbered verses.

The interested and crafty bigotry of the man of law has refused to the people an accommodation which the scrupulous piety of the theologian could not refuse. An act of parliament repels the dividing line of the arithmetician with no less horror, than the accursed soil sown with salt rejects the plough of the husbandman, and yields no fruit. A mathematical point has no parts: so neither has the chaos of an act of parliament.

Many are the modern volumes, in each of which the quantity of matter exceeds not the quantity in a single statute. Yet this statute is no less sacredly indivisible than if *fine* or *præmunire* had declared it one and undivided.

The licentiousness of the press has indeed divided it into parts called sections; and to each of these sections this same licentiousness has gone so far as to affix a different number; — but in the manuscript on which alone has been imprinted the touch of the legislative sceptre, this conceit has no mark to give warrant or allowance to it. Number it has none — division it has none; — what token of separation is afforded, is afforded not by a black line — a blank instead of a whole line, or instead of the latter part of a line; — still less by any of those numbers by which in the authentic letter-press copy it is introduced. A lot of surplusage, and mostly a lot to the same effect, such as — "And be it further enacted," — or, "And be it further enacted by the authority aforesaid," gives commencement to a sentence: — and it is on the reappearance of this useless string of words that the printer finds his only warrant for the arithmetical figure which, to the several successive masses thus distinguished, he has ventured to affix.

None are so deaf as those who will not hear — none so unintelligible as those whose aim and determination is not to be understood.

Obscurity and bulkiness are the closely-connected fruits of which this voluntary nakedness is productive; and they may be seen growing upon the same stalk.

As often as a reference comes to be made, the seat of the matter referred to is either in the act itself from which the reference is made, or in some other act.

1. If in the act itself, to that mode of designation which never fails to be employed, except when misdirection is an object either of study or indifference — viz. designation by the arithmetical name — to that only rational and honest mode of designation, is substituted an intimation that in some part or other of that same act, or at best somewhere or other in the preceding part, or somewhere or other in the succeeding part of that act, that which is meant to be designated — that which the legislator has in contemplation — the matter which the legislator has in his mind, will be to be found. What is the consequence? That in the one case you have to search through and examine into the whole number

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of the sections, one excepted, contained in the act — in the other case, half that number upon an average.

One hundred and twenty-three is the number of sections in the act herein employed * for an example; — fifty, the number of the folio pages in which these one hundred and twenty-three sections are contained. Here, then, instead of a few arithmetical figures, not occupying all of them together a space greater than that which is occupied by a word of ordinary length, the reader has somewhat more than fifty pages to pore over, and in the other case somewhat more than four and twenty, containing each of them about half as many thousand words; and this double and single labour is imposed several times in the course of this act.

But the passages in which this same subject, be it what it may, is touched upon, are they one or many? — and where is it, or where are they? — and in either case, of each such passage how much is there to the purpose? These are among the questions to which, on any or each occasion, a man may have to find an answer, always at his peril: to the magnitude of which peril no assignable limits can be set but those which are set by death.

2. If it be in another such act that the matter in question is to be sought for, then to the designation of the game to be hunted for, is to be added the designation of the field in which the hunt is to be made. Figures and letters to the amount of the numbers of letters in a word — 45 Geo. III. c. 72, for example — are the signs employed for this same purpose by each non-official hand. The title of the act is the only sign which the united power of King, Lords, and Commons, is ever suffered to employ for this same purpose. The title of an act! — and what is this same thing called the title of an act — meaning, of an act of parliament? It is a sentence varying in length, not unfrequently containing in itself the matter of an ordinary page — and this whole page is no more than a sort of compound substantive, forming no more than a part of a grammatical sentence, in the texture of which not unfrequently substantives of this same sort in numbers are combined.

And what is this occasion on which all helps to intellection, all supports to the weakness of the human mind, are so studiously and perseveringly refused? It is precisely that on which such helps to human weakness are at the same time of most importance and most needful; — in which the magnitude of the mischief producible by a false step, and that of the pressure against which the support is needed, are both at the very highest pitch.

To facilitate the communication of knowledge in any inferior department — in the department of school grammar and common arithmetic — no exertions that can be made are thought too great; while in the master science — the science upon which the fate of every other science, and of all to whom it can happen either to teach them or to learn them depends — whatever exertions are made, on the part of the head-master at least, have for their object, not the causing it to be understood, but the keeping it from being understood, or causing it to be misunderstood, and that to as high a degree of perfection in the arts of non-intellection and mis-intellection as possible.

So far, then, as concerns helps to intellection, that which ought to be done by the legislator — and will be done by the legislator as soon as the interests of the whole community at large obtain in his eyes the preference over the separate and sinister interest of a small portion of it, — is not only in the first place to give to the subject-matter in question the benefit of all such helps to intellection as can be found applied to any other subject; but in the next place to look out for all such additional helps, if any, as can be found applicable to the particular subject which stands so much in need of them.†

* 45 Geo. III. c. 72.

† During the administration of the late Mr. Pitt, a person by whose habits the language of statutes as well as of reports had been rendered familiar to him, happening to be in treaty with government, was encouraged to draw up with his own hand the draught of the law necessary to carry the treaty into effect. Desirous of making to his country the best return in his power for the benefit in which it was his hope to participate, it occurred to him to endeavour to take advantage of the opportunity, and apply it to the purpose of planting in the statute-book, for the chance of its serving one day as a precedent, a literary composition in which these helps to intellection should find a place, which, be its importance ever so considerable or ever so inconsiderable, every man that writes endeavours to the best of his ability to infuse into every other.

The terms in which from all quarters, in the profession and out of the profession, from men of all parties as well as men of no party, he heard complaints of the imperfections of the compositions poured forth in such abundance into the country by the hands of right honourable gentlemen and right honourable lords, led him to impute the phenomenon to that combination of carelessness and ignorance and indolence, of which the marks seemed to be so abundant.

A draught was accordingly prepared, which, much about the same time, and before it was submitted to the pleasure of the higher powers, found its way to two professional gentlemen, one of whom at that very time was, the other has since that time been, in possession of the same great law-office.

By one of them it was returned, with the observation that it was good, and by far too good, to possess any chance of finding acceptance.

To the other it was an object of instantaneous and undissembled horror, — Gallicism and Ja-

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§ 7. *Unapt Arrangement and disorderly Collocation.*

The importance of apt arrangement — its necessity in the character of an instrument of operation, a support to the weakness of the intellectual part of the human frame, is such as, one should have supposed, would have never found so much as a single human being to contest it, if the pretence of being exempt from all need of this support had not found a stock of arrogance adequate to the advancement of it — with a correspondent disposition to regard as imbecile, those by whom their need of it is felt, and as trifling, useless, and thrown away, the toils of those laborious men who employ themselves in the endeavour to improve it.

The more bulky and obscure the subject-matter, the more urgent the need which, in its struggles with the difficulties of the subject, the mind has of this instrument of support.

It is easier to be convinced of the utility of good order in every case, than to give such a definition of good order, such an account of what good order is, as shall be applicable, and be at once seen to be applicable to every case.

Be the subject-matter what it may, its nature and properties will be the more correctly and completely, and thence the more clearly understood, the more correctly and completely the nature of the relation which it bears towards all such other objects as it can be seen to bear any assignable relation to, is understood: — and the more clearly the nature of it is understood, the more clear and pure from the imputation of obscurity will naturally any regulation of which it constitutes the subject-matter, be reasonably expected to be.

What objects ought to be brought into conjunction with each other — what ought to be kept separate from each, will depend upon the particular nature of the particular subject which is on the carpet.

But of bad order some general notion may be given, by descriptions which shall apply to good order, and thence to bad order, whatsoever be the subject.

Good order may be disturbed, bad order produced, either by joining together things that ought not to be joined, or by separating from each other things that ought not to be separated: and in the case of things that ought not to be separated, the order is worse and worse, the greater the mutual distance is to which they are cast.

Nomenclature is classification: — to denominate, wherever the denomination is a general term — to denominate is to classify, to methodize, to put in order, to arrange. By denomination, all individuals, all species, are brought together, brought as it were into contact by being comprehended under the same name.

If in the case of a number of objects brought together by the same name, the dissimilitude be such that no property belonging to each of them be found, then so it is, that of the thing distinguished by that name, nothing can be said that is true.

The greater the number of propositions that can be found to belong to each one of them all without exception, the greater the number of truths that can be predicated of them, and the more serviceable the principle of arrangement of which they constitute the subject.*

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cobinism were stamped upon the face of it. The imputation, in truth, was not altogether without foundation. The matter of it was broken down into divisions, sections, and articles; — each article was of a moderate length, and provided with a number, for the purpose of enabling those whom it might concern to refer to it at once, instead of their being sent on each occasion to wander over the whole field, without being sure on any occasion whether they had or had not found the thing they were sent in quest of.

This was certainly a matter of Gallicism: for it is in this form that French lawyers then did, and still continue, to draw up their laws. But what the learned and orthodox censor either did not know, or chose not to seem to know, is, that it was no more a mark of Gallicism, of French principles, than it was of Austrian or Prussian, or Spanish or Sardinian, or Portuguese or Hindostanee principles — or, in a word, of the principles of every other civilized country, into the nose of whose government and inhabitants the man of law has not fixed his hook, as in British noses it is still fixed.

It was, in short, no more a mark of French principles than it was of British principles: — to wit, in so far as the principles of a British soldier may be taken for British principles. For somehow or other, whatsoever be the cause, be it impotence or be it inadvertence, the articles of war do furnish an instance in which gentlemen who have learning for their attribute, have the mortification of seeing the language of common sense and common honesty substituted for a moment to their own dialect of the flash language.

As to the dignitaries in question, one of them (it need not be mentioned which) was a British lawyer, who had engaged in the practice of the profession with a real desire of contributing to clear the field of those abuses from which profit in such abundance flows into the coffers of its professors, and of rendering the law subservient to its professed ends — a man who, notwithstanding his endeavours in this line, was in his day the most popular man in his profession in the kingdom—the man, to enjoy a momentary glance of whom, men have come from the remotest parts of the country.

As to the other dignitary, any particular designation of him, direct or indirect, would be as useless as it would be invidious. The observation made, as above, by him, differed not materially from that which any other person of similar and equal learning would have made, or been ready to make, in his place.

* In and for the purpose of another work,† a systematical view was endeavoured to be given

† See *Introduction to Morals and Legislation*, Chap. XVIII. Vol. I. p. 96.

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Bad order is either that which is such in respect of *aggregation* or *disaggregation*, or that which is such in respect of *precedence*.

In the case of that which is said to be bad in respect of aggregation or disaggregation, the order of precedence between object and object, in the case of such objects as are cast into one group by being brought under the same name, is not considered.

When the scheme of order in question is spoken of as being bad in respect of precedence, the articles with reference to which the topic of precedence is brought to view are considered as being each of them distinguished and made known by a separate name: —and thereupon it is, that in relation to the several objects or articles upon the list, the question arises which shall be placed or spoken of first, which second, and so on through the rest.

In this case, bad order takes place when, relation being had to the purpose or design, whatever it be, which is in view, that object which ought to have stood first, is placed second, or in some lower rank; and so in regard to the rest.

In the case of the English acts of parliament, instances will be found in but too great abundance, in which, reference being had to the purpose or design which was, or at any rate ought to have been, in view, disorder in both its shapes as above distinguished, may be seen to manifest itself.

of the aggregate body of *offences*—meaning, of sorts of human actions, in relation to which, in respect of the mischiefs of which they respectively threatened to be productive, it naturally would, on the part of a legislator, come to be proposed for consideration, and in general had been matter of consideration among legislators, whether it might not be advisable to render them objects of prohibition and punishment, or something that should have the effect of punishment.

At the first step, the aggregate body thus denominated was broken down into four divisions: —and the groups comprised in those several divisions were so composed, that of each group, that is to say, of every individual in each group, a number of propositions, twelve or thereabouts, might be predicated, and this in every instance without involving any proposition that was false.

These propositions being such as in every instance appeared to lead to practical conclusions —conclusions indicative in each instance of a probability that, by pursuing such or such a line of conduct in legislation, might be effected the prevention of sensible mischief and inconvenience (mischief reducible ultimately to this or that modification of pain, or to loss of this or that modification of pleasure)—this scheme of classification was recommended, as adapted to the purpose of the enunciation of useful truths.

On adverting, on the same occasion, to the schemes of classification employed in relation to the same subject by men of law in general, and by English lawyers in particular, an assertion was advanced, that no scheme of classification was to be found in use, of the primary classes of

CHAPTER VI.

OF REMEDIES.*

§ 1. *Of Remedies for Ambiguity.*

1. WHEN the ambiguity is *in terminis* or *in vocabulo*, the nature of the case admits not any remedy susceptible of universal application. The term must either be changed, or, by such explanation as the nature of the individual case requires, the import of it must be limited and fixed.

2. So where the ambiguity is *in propositione* or *in contextu*.

3. Where the ambiguity is *in situ*, i. e. *ex prava collocatione*, the case admits of a remedy susceptible of a general description applicable to all cases.

A proposition capable of being understood, for the moment at least, as meant to be applied in the character of a limitative proposition to either of two other propositions, but in reality meant to be applied to only one of them, is inserted between the two. In this situation lies the efficient cause of the ambiguity.

The remedy is simple and effectual. Insert it neither between them both, nor after them both, nor before them both, but in the bosom of one of them; viz. of that one of them to which, and to which alone, it is, in such its limitative character, intended to be understood as applying.

Thus it is when the object in view is to apply a limitative proposition to one single principal proposition, and to that alone, the operation is sure and easy.

But suppose the object to be, to apply one clause in the character of a limitative clause to two or more; say to *two* principal ones.

Here the rule is, *prefix it to both*.

1. Do not place it between both; for to do so would be to render it doubtful whether it were meant to apply to both, or to one only—and if to one only, to which?

2. Do not place it at the end of both;—to do so, would be to give occasion to regard as the preferable supposition that it was meant to apply to the last alone, not to the first.

Insert it *after* the last of the two,—the idea naturally suggested by this position will be, that it was by that last, and that alone, that it was suggested;—that it was the last, that for want of this limitation was too general, and accordingly, but for the limitation so applied, the phrase employed for giving expression to it would have been incomplete;—

which, propositions completely true could in any thing like an equal number, if in any number at all, be applied.

* As these remedies apply, each of them, to several imperfections at once, they cannot be made to follow the order of the imperfections.

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that in presenting in the first instance the proposition, which by the supposition is too general, too comprehensive, a sort of false step was made, and it was to correct this false step, that in the way of after-thought, the limitative clause was added.

On this occasion, let the state of the author's mind have been what it may, such is the state of the reader's mind. The first conception he imbibes is incomplete and incorrect — incorrect by reason of its excess in point of extension, the result of the as yet unsupplied defect in the form of words employed for the expression of it — which defect consists in the absence of the limitative clause that was necessary to render the expression exactly commensurate with the import as it stood in the author's mind. At the next step, indeed, the mind of the reader imbibes the conception by which he is enabled to correct the momentary error — to retrace the false step which he had made. But as in the progress of the body, so in that of the mind, the sensation of a false step is, however expeditiously and easily retrievable, a sensation of an unpleasant kind, such as by repetition is capable of being rendered seriously disagreeable; and such as even, in any single instance, it would be better to a man to avoid than to experience.

Take now the case where the clause meant for a limitative clause is placed before the first of the clauses which it is meant to limit by it.

Here, in the first place, so far as regards the first of the two principal clauses, all such error as hath just been brought to view is effectually prevented. At the very outset, notice is given, that the proposition which is about to follow is not meant to be given as expressive of the author's meaning, till after the portion of extent, indicated by the antecedent, the limitative clause which is thus employed to introduce it, has been taken out of it.

Thus it is, that to the reader the unpleasant sensation, the sort of false step in question, is saved.

At the same time, on the part of the author, of that self-possession, that mastery of the subject, that state of complete preparation for the task he has set himself, that indication is given which has been above explained. At the very commencement of the sentence, the conception which it was his own endeavour to convey, was, it is manifest, already formed. Had the powers of the language sufficed for the conveying the conception in its perfect state in one single clause — such single clause, and no more, would have been employed for it. The language not being adequate to the purpose, he found himself under the necessity of employing two clauses — one of them to prune down and correct the other. But under, and notwithstanding, this imperfection in the language, he took care that in the mind of the reader no erroneous conception should be formed. For by giving notice, in the first instance, of the deduction that would come to be made, he took care that the conception should be already pared down to its proper scantling, before it presented itself for admission into the reader's mind.

Now as to its application to the second of the two clauses which it is designed to limit. Being placed before this second, as well as before the first, — and in placing it before the first, these marks of attention and self-possession which have just been mentioned, being exhibited as above, — the conception will naturally be, that it was to this second that it was meant to apply, as well as to the first.

Either (says the reader to himself) it was the author's meaning, that the one limitative clause should be applied to both the principal clauses that follow it — to the second, as well as to the first; — or if it had not been his meaning that it should apply to the second, he would have found some means of giving timely notice of the difference; or rather, had such not been his meaning, he would have, by giving the proper turn to the whole group of clauses, have taken sufficient care to prevent any such erroneous conception from being entertained.

Rule. — If you would avoid ambiguity arising from mis-collocation, or *ex situ*, — if there be but one clause to be limited, insert the limitative clause within it; if there be more than one, place it before them all.

In both these cases, besides obviating a logical disorder, the remedy exhibits a positive beauty. It is in the former point of view that it applies to the species of composition here in question, — viz. to the work of a legislator; in the other point of view, it is susceptible of universal application, — applicable to every discourse, whatsoever be the subject — though in a more particular degree to such as has persuasion for its object.

In the case of the single principal clause, ambiguity on the part of the discourse, probability of doubt on the part of the reader, uncertainty, more or less durable, being the constant result of the unapt collocation — and of the hesitation and uncertainty, a sensation of an unpleasant kind being as constant a concomitant, the not taking the requisite measure for saving him from this unpleasant sensation is a proof of a deficiency in that art — the art of pleasing — of which the very act of a man's taking upon himself the character of a writer, shows it his wish to be a proficient.

In proportion to the constancy with which that symptom of weakness is avoided, and observed to be so, strength and self-posses-

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sion, qualities agreeable to be observed, will on the part of the mind of the author be manifested — and on the part of the work, the correspondent agreeable quality, viz. force.

In both cases, the expedient employed is indicative of a mind which has the whole subject under command, and by which it is embraced with a firm grasp.

With respect to ambiguity arising *ex vocabulo*, the two following rules may be laid down for the avoidance of ambiguity:—

Avoid the use of any locution exclusively legal.

Expound all words of doubtful or varying signification.

§ 2. *Of Remedies for Overbulkiness.*

In bringing to view the imperfections incident to the language of legislation, when in the character of an imperfection incident to any mass of legislative matter the vice of overbulkiness came to be placed upon the stage, the distinction between *absolute* and *relative* was stated as a distinction which, with a view to practical arrangement, would in a proper place be shown to be an object of prime importance.

The time is now come for inquiring by what means it may be employed in that character to the best advantage.

On casting, in this view, a glance upon the whole mass of legislative matter existing in the political state in question, whatsoever it may be, two observations readily present themselves at first sight. One is, that there is scarcely an individual in the country, at any rate the number of individuals cannot but be comparatively small, by whom, taken in its totality, it is physically possible for so enormous a mass to be borne in mind.

The other is, that taking for this purpose any individual at random, there can be but a comparatively small part of that vast whole, with which, in respect of any private and personal interest of his own, there can be any use in his being acquainted.

Be the bulkiness of the whole ever so great, if there be not any assignable individual with reference to whom it can with propriety be said to be over-bulky, it cannot with propriety be charged with overbulkiness.

Hence, in the character of a remedy, and that the main remedy against overbulkiness, we have a rule with a corresponding principle.

The rule is: let the whole mass of legislative matter be broken down into parts, carved out in such sort, that in hand, and thence in mind, each man may receive that portion in which he has a personal and peculiar concern, apart from all matter in which he has no concern.

Rule — *the rule of distribution;* — corresponding principle — the *suum cuique* principle — to which for this purpose, and in concerns of the sort here in question, reference may henceforward be made.

In the application of this rule and this principle, two points will require to be attended to: —

The first, and the only one of the two which is in a direct way conducive to the object here in question, is to observe and take care that in the collection made for the use of each particular individual or class of individuals, no portion of legislative matter in which such individual or class have not any such personal concern as above, be admitted.

Rule — the rule of *purity;* — corresponding principle — the *nil alienum* principle.

The other point is, in making up, for the use of each individual or class of individuals having a separate mass of legislative matter appertaining to himself or themselves as above, let care be taken not to omit any the least part of the aggregate mass of the legislative matter so appertaining to him or them.

Rule — the rule of *completeness;* — corresponding principle—the *unicuique totum* principle.

Take any point of time, —if at that point of time, a portion of law to which, at some future point of time, it may happen, to bear upon the interest of the individual in question, does not as yet bear upon his interests, such portion of law is as yet foreign to him.

At the time at which it does begin to bear upon his interest, then it is, and not before, that it concerns him to have it in mind, and to be subjected to the charge, in whatsoever quarter it presses upon him, in purse and in memory, which will be found attached to it.

In this observation may be seen the ground for an ulterior rule of distribution: — in the case of each individual or class, separate from such part of the mass of law as is matter of immediate concernment to him, such part as is but matter of eventual concernment.

Rule — the rule of *ulterior purity;* — corresponding principle — the *nil præmaturum* principle.

To take an example in the general and all-comprehensive field of law: —To him who takes upon him the condition of a husband, and thereby becomes concerned in point of interest to be apprized of and bear in mind the provisions contained in the married man's code, it may happen in the natural course of things to become a father. If, then, of the assumption of the condition of a husband, paternity were an immediate as well as a certain consequence, the reason for his bearing in mind the provisions relative to the condition of a father would take place at the same moment with the reason for his bearing

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in mind the provisions relative to the condition of a husband. But there being no such necessary and immediate connexion in the case, but so it is, that of those who become husbands, there are many to whom it never happens to become fathers, — here we see a sufficient reason for keeping the father's code separate from the husband's code.

So grievous is the charge imposed upon a man's faculties, pecuniary and mental together — so grievous, in many cases is it capable of being, and indeed apt to be in some cases, that the reducing of it to its minimum is a duty, the proper discharge of which demands at the hands of the legislator his constant and unremitted care.

On the one hand, the importance of the interest at stake upon the fulfilment or non-fulfilment of the law — on the other hand, the absence or presence, the comparative efficiency or non-efficiency of the forces, whatsoever they may be, which tend to plant and fix the conception of the purport of the law in the mind of him on whom the fulfilment of it depends: upon these two circumstances depends, on the part of the legislator, the urgency of the demand which the nature of the case presents for the application of the legislator's powers to the effectuation of this object.

Let us now, then, take a view of the different aspects which one and the same law is capable of bearing towards different descriptions of persons — the different ways in which their interests are affected by it — the different accounts on which they are concerned to bear in mind the purport of it.

Mention of the head or denomination of persons under which the portion of law in question will be to be found, together with the number indicative of the subdivision — such as the chapter, or section, or article in which it will be to be found: this, together with a concise intimation of the nature of the contents — (and a very concise one is all that will in any case be found needful) — such is the mode that will be found to serve, and to suffice for securing to each person adequate notice of every portion of law, the contents of which are not inserted at large under the head taken for the denomination of the class of persons to which he belongs.

By means of this additament, the matter of every such personal code will be distinguished into two parcels of matter of very different qualities; — viz. 1. Matter of *direction*; — this is the sort of matter which in the personal code in question is inserted at large — delivered *in terminis*. 2. Matter of *information*; — this is the sort of matter by which information is given of the several other personal codes, in which is to be found whatsoever other matter of direction in one way or other the person in question has concern with

§ 3. *Of the different ways in which the interests of different persons may be affected by one and the same portion of law.*

A sort of law may be conceived, by which no more than one person or class of persons is affected in point of interest; — others are to be found, in which, by one and the same law, divers persons, in a number to which there are no determinate limits, are in point of interest affected in different ways.

On the present occasion, these variations will all of them require to be brought to view: — these being the considerations by which, with a view to the most effectual system of notification, whatsoever course is taken with respect to the composition and promulgation of the portion of law in question will require to be regulated.

If, in the case of an imperative, or say obligatory law, the well-being of the whole community or any part of it be the object aimed at, two parties, or at least one party, may be assigned, whose interests are affected by the portion of law in question. One party there cannot but be — the law being of the imperative or obligatory cast — who being bound by the law, may on that consideration be termed the party charged.

In this case, if so it be as by the supposition it is, that this law has for its object the well-being of the community or of some part of it, there must also be in that case some party who in that respect may be termed the party favoured by the law.

A case not without example is, that the party favoured by the law, and the party charged by it, shall be the same party — the same person or class of persons. In domestic life, this is the case with every command addressed by a guardian as such, or by a parent in his quality of guardian, to a child — by a preceptor as such, to his pupil as such.

In public life, this is the case with that whole class of laws which have for their object the enforcing of what is considered as a man's duty to himself — the prevention of those acts by the commission of which a man is considered as doing an injury to himself, as in the case of drunkenness, prodigality, and so forth.

Even taking the whole mass of law together on the one hand, and the whole mass of the population together on the other hand, — if the principle of utility as above described, be the principle acted upon, the same coincidence between the party or parties charged, and the party or parties favoured, will in this case likewise be observable: — if all are charged by the law, it is to this end alone that they are charged, — viz. that they may all be favoured by it.

Suppose the whole population divided into two parts, of which one part alone is favoured,

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the other charged without being favoured: it is the case of complete and unrestricted slavery — such as in ancient Sparta seems to have had existence as between the Spartans and the Helotes; but in modern times does not seem to be exemplified in any country, even in those in which domestic slavery is to be seen in its harshest forms; — for in every slave-holding country protection more or less efficient is by law afforded to the slaves; and in so far as it is afforded, two parties may be seen whose interests are in opposite ways affected by such protecting laws, — viz. the slave, who is the party favoured — and the master, who is the party charged by it.

So again, in the case of those laws which have for their object the prevention of those pernicious acts from which, in so far as they are committed, men in general have cause to fear, at the same time that men in general are exposed to the temptation of committing them — such as in a large proportion are those laws by which security to person, and those by which security to property, is endeavoured to be afforded. Murder, theft, and robbery: these, for example, are among the acts which all men are interdicted from performing; why? Only that all men may be saved from suffering by them. Here, then, under laws of this description all men are parties charged, at the same time that all men are, and to the end that all men may be, parties favoured by those laws.

But if particular laws, or portions of law, be taken each by itself, a considerable class will be found, and the most numerous, and occupying in the Pannomion the largest space, in which the whole of the charge is laid upon one person or set of persons, while the whole favour is shown, and to the end that it may be shown, to another. Nor in this sort of partiality, as it may be called, is there any just cause for condemnation or complaint. Laws of that description are, it may be seen, and that in vast abundance, absolutely and indispensably necessary to the adaptation of the whole legal system to its general all-comprehensive and impartial end; and for whatsoever momentary partiality is exhibited by any one such law taken by itself, due and adequate compensation is, or at least ought to be, and may be, made by others.

Of the case last spoken of, the simplest modification is, where by one and the same disposition of law there are two parties concerned, of whom that the one may be charged and another party be favoured, the other is charged.

Thus in the 45th Geo. III. c. 72, certain officers therein named are charged with the duty of keeping hung up in a certain place, papers containing information to a certain effect. To what end? Answer: That certain persons, to whom for the purpose of prosecuting certain pecuniary claims of theirs, the information is useful, and may be necessary, — (viz. seamen, &c. having claim to prize money) — may have it at their command, and know where to meet with it.

Persons charged by the law, those official persons; — favoured by it, — seamen, — viz. such individuals of that class to whom it has happened to possess a claim of the sort there spoken of.

A party who under the provision of law in question is in the case of a party favoured, may be so either for his own sake, or for the sake of some other or others.

If for his own sake, and in so far as it is for his own sake that he is so — *i. e.* with a view to a benefit which it is intended he should reap — *principal* is the name given to the character in which he is thus favoured.

If it be for the sake of another, or others, — *trustee* or *agent* is the name given to the character in which he is thus favoured.

When for the sake of one set of persons (his principals) powers are given to a trustee to be exercised over another set of persons, — at the same time that in the exercise of those powers, a certain course of action is prescribed to him, and made matter of duty, — in such case, then, it is, that in that one person the characters of party favoured and party charged are combined; — it is, that for the benefit of the party in question, viz. the principal, he may be enabled to perform the service required at his hands, that the right or the power, by the possession of which he is favoured, is conferred as above. Favoured as he is, he is so to no other end than that he may be charged.

In so far as a party is placed in the situation of a party *charged*, unless the faculties upon which the charge bears are his passive faculties merely, the charge not being in any event liable to fall on his active faculties, the charge cannot be imposed upon him without need of action, on his part; — if not of positive agency, of negative at least — of purposed forbearance, which when purposed is as truly the result of will, as positive agency is, and for its production stands altogether as much in need of appropriate information, viz. notice of the legal arrangements by which the motives for such forbearance are created.

In so far as a party is placed by the law in the situation of party favoured by it, the favour thus afforded to him is afforded to him in some instances not without need of action on his part — in others without need of action on his part, to enable him to reap the benefit of it.

Thus, in so far as for the preservation of men's dwellings from nocturnal invasion for the purpose of robbery, pains of law are appointed applicable for the punishment of

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persons guilty of such offences, thus far the favour thus shown to a householder and his inmates is afforded to him without need of action on his part; — and though the existence of the law were never to be known to him, the favour, the protection intended for him, would not be the less received.

But suppose, that for the rendering this protection the more effectual, power be given to this householder to arrest and detain the person of any and every such nocturnal invader — or even, rather than that he should escape, to have recourse to such operations, the result of which may be the depriving him of life, — in such case, the favour shown to him is not afforded to him without need of eventual action on his part; — nor can the favour thus shown to him, the protection thus afforded to him, be of any use to him any further than he has recourse to either, viz. by affording to himself the sort of protection which it thus empowers him to afford.

A portion of law, though to this effect, cannot be in any other case of any use to him any further than either by effectual notification from without he has been apprized, or by reasoning and inference has been led to believe in the existence of a portion of law to this effect.

Of these speculative distinctions the practical use is altogether obvious.

Whatsoever portion of law requires, on the part of a person to whom the favour shown by it is afforded, action, to enable either himself, or such other person for whom the benefit of it is intended, to reap such benefit of this portion of law, it is necessary that by whatsoever efficient measures are taken for planting and fixing the purport of it in his mind, the intimation conveyed to him should be of the correctest and completest kind: — and accordingly, that in the code denominated from the class of persons to which he belongs, the portion of the law here in question should be inserted *in terminis*.

On the other hand, whatsoever portion of law does not, for the purpose in question, stand in need of any such action on his part, — of the nature and existence of such portion of law, an intimation conveyed in general terms, together with reference to the head under which it may be found *in terminis*, suffices for every necessary purpose. To make known to him the care which the law in this particular has taken of his interests and his welfare, is all the service which, by the information thus given to him, in this case will be rendered to him. But surely, were it only for the reputation of the law itself, not to speak of the assurance and comfort thus afforded to the individuals, the intimation is of the number of those which neither ought to be, nor are much in danger of being despised.

§ 4. *Case where a number of persons are, in a company or in a string, jointly affected by and concerned in one and the same portion of law.*

Numerous and various are the cases in which, to the rendering of a single service to a single person in the character of *principal*, the services of a multitude of persons in the character of *agents* or *trustees* is necessary.

If to the rendering of these intermediate services, the case be such that in the instance of each of them action is called for at the same time, they may be said to act in a *group* or *circle*: — if the case be such, that to the production of the ultimate beneficial effect it be necessary that they should act separately and at successive times, they may be said to act in a *string* or *file*.

It is in a group or circle that men act, in every case in which they act together in the manner of a political assembly or body-corporate, or a board.

It is in a file or string that they act, when for the transmission of any article whatsoever, such as a sum of money, a letter, or any article of commerce, it is necessary that the operations they respectively perform in relation to it should be performed at several successive points or periods of time.

In so far as it is in *groups* that men act, one single denomination serves commonly for the whole group — *i. e.* for all the several persons or sorts of persons of which it is composed.

In the case where it is in strings or files that they act, there will always be two different denominations of persons concerned together — the one to deliver the thing in question, the other to receive it — the deliverer and receiver of the thing in question.

In this case one code would serve for both; and of that one code the denomination should be a compound one, composed of the denomination of these two sorts of persons.

Each having need of action on his part, whether to render or to receive the service, the favour in question, — the intermediate service, — which for the benefit of some person in the character of principal leads on to the final and ultimate service in which the whole string of services finds its termination, — each has need, each has the same need, to have the law planted and fixed in his mind.

But what will in most instances be found to be the case is, that to each of the two classes of persons whose duties are on this or that occasion rendered by both together acting in conjunction, — other duties have been assigned — duties to be performed on different occasions by each of them, in some instances singly, in other instances in conjunction with some other associate.

But to every person in whose instance need

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of action has place, — in order that the intention of the law may be fulfilled, and the service which it has undertaken to perform be rendered, it is necessary that the law be planted and fixed in his mind: it is therefore necessary, that in the code which receives its denomination from the class of persons to which he appertains, this portion of law should be inserted *in terminis*.

But—that in this case the burthen imposed by the law on the mind of him to whom, on whatsoever account, it is necessary to be apprized of the duties imposed upon both these classes, and to whose cognizance it is therefore necessary that both these codes be presented, may be reduced to its smallest dimension,—when the portion of law inserted in the code denominated from one of these persons, is also inserted *in terminis*, and in the same terms, in the code denominated from the other, notice of this identity should in each of these codes be given in a note.

§ 5. *Modes of Notification.*

In the case of any given individual or class of individuals, two different modes or degrees of notification must here be brought to view and distinguished.

One is *exposition at large* — or say, exposition *in terminis*; viz. where, under the head taken from the denomination of the individual or class in question, the portion of law in question (it being a portion in which, in one of the above-mentioned modes of concernment, he is concerned) is exhibited at length.

The other is by simple *indication* or *reference*; viz. when another head, under which the portion of law in question (this being also a portion of law in which, in some way or other, he is concerned) is set forth at length, is referred to.

Under the head taken from the denomination of the class in question, notification in this mode pre-supposes, it is evident, exposition at length, under the head taken from the denomination of some other individual or class. Be the portion of law what it may, under some head or other it is necessary that it should be delivered at length — delivered *in terminis*; but that it should be thus delivered under more such heads than one — that it should anywhere be repeated *in terminis* — is not necessary.

§ 6. *Necessity of attending to these distinctions in legislative practice.*

The distinctive characters suggested by the *suum cuique* principle, are such as no man who acts in the character of a legislative draughtsman can be warranted in treating with neglect.

1. The question, what, in the provision or clause in question, is the individual or class of persons concerned in the character of *party served*, to whose interests it would do service — viz. on his own account—is a question which he can never be warranted in omitting to look at and bear in mind. Why? Because in point of expediency, in this supposed service consists the indispensable warrant for the portion of law in question, including whatsoever charges of an obligatory nature it may, whether in a direct or an indirect way, have the effect of subjecting him to. If no such individual or class can be found, the portion of law in question, be it what it may, is purely mischievous, and completely indefensible.

In the service rendered to some party favoured on his own account, consists on each occasion the legislator's indispensable warrant: — which warrant will be sufficient or insufficient, according as the portion of law in question is upon the whole beneficial or otherwise — according as a balance on the side of good, or a balance on the side of evil, is the effect of it.

2. The question, what is the individual or class of persons concerned in the character of *party charged* — viz. in respect of his active faculties — is another question which he can never be warranted in not looking to and bearing in mind. Why? Because on the fact of the laws being actually taken up and borne in mind by each one of the individuals who in that character are concerned in it, depends whatsoever chance such law can have of proving efficient and productive of the service, of the good, in whatsoever shape good can be looked for as being about to be the fruit and consequence of it.

Be the command what it may, it is only in proportion to the degree of correctness with which, at the point of time which on each occasion calls for action on the part of him in whose instance obedience is looked for and meant to be produced, that obedience can be the fruit of it.

True it is, that without his having had it on that or any other occasion in mind, it may have the effect of causing him to suffer, in this or that way, pain in any shape and degree up to the pain of death. And such is the effect, intended or not intended, heeded or unheeded, which to a vast extent the mass of law, with which in mind and in pocket British subjects are actually burthened to so vast an extent, is actually productive.

Without his having had it on that or any other occasion in mind, it may have the effect of pouring money into the pockets of the retainers of the law in one or all their different forms and sizes. And such is the effect, intended or not intended.

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§ 7. *Plea in favour of Redundancies — necessary to certainty denied; — and Rules for securing steadiness and certainty.*

For this redundancy — for the accummulation of excrementitious matter in all its various shapes, in all that variety of forms that have been passing under review — for all the pestilential effects that cannot but be produced by this so enormous a load of literary garbage, — the plea commonly pleaded — at any rate, the only plea that would or could be pleaded, if men who are above law could be put upon their defence by any pressure from beneath, is, that it is necessary to *precision* — or, to use the word which on similar occasions they themselves are in the habit of using, *certainty*.

But a more absolutely sham plea never was countenanced, or so much as pleaded, in either King's Bench or Common Pleas.

That this redundancy is altogether without use — that it never is in any the smallest degree the effect — that it is too palpably not the effect, or so much as the object, — are propositions that have received not merely a full, but a double proof.

One proof is, that there is another and a very different mode by which such certainty is really attainable: — and that such other mode, so far from being employed, is as it were carefully avoided. But of this presently.

The other proof is afforded by that unsteadiness which is a no less congenial attribute than is the redundancy of this established style.

Say that for the subject-matter in question some established denomination which is not only the most proper but the only proper one: such, for example, as the name given to a company in its charter of corporation. Here would be a reason which, how far soever from being conclusive, would at any rate be a plausible one for the exclusive use of that denomination, how longwinded so ever, as often as the occasion occurred for making mention of it in the statute.

Well, then, this strictness in employing for the designation of the thing in question the only proper designation, is it really observed? — so far from it, that from this only proper standard the departures may be seen to be frequent in a degree of wantonness. By no schoolboy, amidst the distress produced by the obligation of hammering verses out of a refractory subject, is any such profusion of synonyms and equivalent phrases manufactured, as may be seen to grow under the hammer of the parliamentary draughtsman, especially of these times.

The longwinded appellative, or other form of words, to what purpose is it regarded as necessary?

1. To intellection? In no instance is it ever employed, but that some shorter one may always be chosen, which is at least as generally and fully understood, and if there be any difference, more so.

2. To validity? Validity is exemption from nullity — and nullity, the offspring of fraud and absurdity, is the creation of positive law.

Pregnant as it is with injustice as often as it is carried into effect, the habit of injustice is not so extensive but that, if applied to the case here in question, the apprehension of nullity would for the most part be found in vain.

But suppose the case of the number of those in which the apprehension would prove well founded. In the frequent use he makes of the longwinded appellative, the draughtsman would still be without excuse, since the instances of neglect are not less numerous than the instances of observance.

Such, then, is the dilemma on one or other horn of which he will be sure to be impaled. Your longwinded appellative, is it necessary to justice? Violation of justice is rendered frequent and unavoidable by your frequent violations of your own rule. The consumption of words is it unnecessary? The mischief of overbulkiness is without compensation — the sacrifice made of conciseness is without equivalent, the barbarism and deformity without excuse.

Where certainty is really the object, it may be secured, it will be seen, without any addition to bulkiness — without any sacrifice in the article of conciseness.

What is more, the nature of the case will be seen to afford principles and rules, by the adoption and observance of which, the perfections of steadiness and certainty may be combined together.

The principle which requires that throughout the whole body of the law, for the expression of any given import, one and the same word or form of words be, unless for special reason, undeviatingly employed — call it the principle of *steadiness*.

Correspondent rule, expressed for conciseness and impressiveness in a different language, and that the most concise of languages — the Latin, — *eadem natura, eadem nomenclatura*.

By proper management adapted to the nature of each case, the principle of steadiness may be rendered a principle of *conciseness*; — a preservative against *redundancy* and *overbulkiness*.

For the avoidance of uncognoscibility and overbulkiness, and for securing to the language of the law the beneficial properties of certainty and conciseness.

Rule: Throughout the whole field of law, look out for such subject-matters or objects as, either by their importance, or by reason of present deficiency of fixed denominations, stand particularly in need of fixed denominations, and form such for them.

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The following are among the various modes of exposition adapted to various cases: —

1. When, of a class of persons for which there exists no separate or other authentic denomination, frequent mention is about to be made, instead of employing for the designation of such aggregate a loose and varying description, fix upon some short appellative, if any such appellative there be in common use, and after such exposition in the way of definition as is adapted to the nature of the object, if in its nature it be susceptible of what is commonly understood by the term definition,— the import of it being thus fixed, and certainty so far provided for — for the sake of conciseness, employ on every occasion the short appellative.

Take, for example, the class of persons commonly denominated prize-agents.

In the act 45 Geo. III. cap. 72, in some places mention is made of them simply under that name; but it is not that name that is given to them when mention is made of them in the first instance. The appellation which on that leading occasion is employed for the designation of them, is a longwinded string of words, after which, besides the one concise and popular appellative, and this diffuse technical appellative, they are in different places spoken of under a variety of different descriptions.

In this case, the following are the words that may serve for the expression of the rule: — *Definitio semel; definitum, toties quoties.*

1. This appellative, whether single-worded or compound, as soon as it has received a definition in form, let it thenceforth, as often as it occurs in the text of the law, of any part of the body of the laws, be distinguished by a peculiar type.

2. The several words thus distinguished, let them be collected together, and printed in the form of an index, each of them with references indicative of the several passages in which they are employed.

3. The peculiar type, its use and signification being universally known, will, in the instance of each word on which it is bestowed, serve as a sort of certificate or memento that the word has a place in this index — that it is, accordingly, of the number of those words to which the attention of the legislator has been in an especial manner directed, and of which, so far as depends upon his endeavours, the import has been fixed.

This type would in different ways be of use to persons in different situations, — to persons in the situation of subjects, and to persons in such situations as bestow upon them a share in the process of legislation: —

(1.) To the subject citizen it would be an advertisement informing him of the fixity that has by competent authority already been given to the word or combination of words in question.

(2.) To the legislator, by conveying to him the same information, it would be a memento and a warning not to loosen and set afloat the import of that same appellative by any fresh and different sense superadded to its precedent original sense, and without due warning of the difference.

2. Where a number of objects present themselves, so connected in such sort as that there is frequent occasion to comprehend them under one and the same provision, — in such case, to avoid the need of continual repetition, with the danger of incomplete repetition, find or frame, if any fit term can be framed, some term of more extensive import, capable of being applied in the character of a common *genus*, with relation to which they shall be so many species, so many congeners, or congenerical species. This done, employ thenceforward the one generic term, in lieu of the series or string composed of many specific ones.

Thus, in the act before referred to, 45 Geo. III. cap. 72, after some advance made in the act, the word *captors* comes to be employed. But, for distinguishing the genus or class of persons in question, and meant to be brought to view by and under that name, neither that nor any other generic appellative is employed in the first instance. Instead of that comes a list of congenerical terms, which list, being in different places different, is in some places incomplete.

In the same act occurs, in different places, mention of allowances of money made to persons of the description in question on various accounts, which allowances are in different places characterized by the denominations of prize-money, bounty-money, salvage-money, and seizure-money. Encouragement in the line of military service being the object declared to be aimed at on the occasion of each of these several allowances, *encouragement-money* is a term capable of being applied to all of them in the character of a generic term, — applied to all of them put together, with no less propriety than their respective above-mentioned specific appellatives are in the instance of each.

Accordingly, *Nomen genericum cum specificis, semel: Genus per se, toties quoties.*

3. In the case where, for the designation of the object in question, there exists an authentic appellative, but that appellative is many-worded and longwinded, — if a popular appellative can either be found or made for it, provide such concise appellative accordingly; — thereupon, having for the sake of certainty expounded it once for all by its authentic synonym, thenceforward for conciseness sake employ it.

Rule: *Nomen vulgare, cum synonymo authentico, semel; idem per se, toties quoties.*

Thus, in the act before referred to, 45

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Geo. III. cap. 72, in some places the establishment commonly called Greenwich Hospital is designated by a longwinded and more formal name,—the Royal Hospital at Greenwich, &c. But in other places it is designated by a still more longwinded denomination, which has the appearance of being the name by which the governing body is designated in the charter of incorporation, viz. "the Governors and Directors of the Royal Hospital at Greenwich," &c.

Greenwich Hospital: this name, as often as it occurs, might be understood as denoting the governors, or the establishment of which they are governors. By an intimation of which of these was intended, certainty would to the utmost be provided for, and the embarrassment in which a sentence is involved by a compound and longwinded appellative be avoided. And so in the case of Chelsea Hospital.

In like manner, by preliminary note, "Greenwich Treasurer," and "Chelsea Treasurer," are so many short names that may with advantage be substituted to the formal and more compound denomination appertaining respectively to those two official persons.

4. In some cases, the same office is liable to be filled at different times in different manners: for example, at one time by a single person, at other times by an assemblage of persons, as "*Lord High Treasurer*," "*Commissioners of the Treasury*," "*Lord High Admiral*," "*Commissioners of the Admiralty*;" at one time by an officer called by one name, at another time by an officer called by another, as "*Treasurer of the Navy*," "*Paymaster of the Navy*."

In this case, instead of employing on each occasion both or all of these official names, take in the first instance the most simple, and having for certainty subjoined to it whatsoever synonymous or equivalent expressions are in use, for conciseness employ thenceforward the most simple—except it be in such places, if any such there be, in which, by the nature of the occasion or the composition of the context, this or that synonym is rendered more proper or more convenient.

Examples: 1. To Treasury, subjoin Treasury Board, Lord High Treasurer, Lords Commissioners of the Treasury, and so forth: and thenceforward, except as excepted, employ the single-worded appellative Treasury.

2. To Admiralty, subjoin Admiralty Board, and so forth: and thenceforward, except as excepted, employ the single-worded appellative Admiralty. But in this particular case, the word Board may sometimes be necessary to be subjoined; viz. for the purpose of distinguishing this the office of administration so denominated, from the judicatory styled the High Court of Admiralty.

5. It will sometimes happen that an appellative originally employed to designate a class of objects of a certain extent, and exactly fitted to that class, shall have been employed to designate that same class with the addition of another class, to the designation of which other class it is not with equal propriety adapted;—in which case, to save the imposition of a new and unaccustomed name, there may be a convenience in employing for the designation of this new enlarged class, the name which, though before the enlargement strictly *proper*, is since the enlargement become no longer so.

Rule: The import of an appellative may be ampliated—may be extended by *ampliation*, giving proper notice.

So again in regard to restriction.

Rule: The import of an appellative may be restricted—narrowed by *restriction*, giving proper notice.

In the index, after any definition or other exposition which in any other shape has been given of the appellative, add the number of all such ampliations or restrictions, if any, as it has received, making mention of the occasions on which, and referring to the *titles* under which, those respective operations have been performed.

Example of ampliation: Prize agent—extended to comprehend bounty-money agent, and to salvage and seizure-money agents.

Rules having for their subject the directive clause, or words of direction in the composition of a statute—and for their object or end in view, the prevention of ambiguity, obscurity, and overbulkiness, by prevention of unsteadiness and redundancies:—*

Rule 1.—Command includes permission. To mean to command any act to be done, and not to mean to permit it to be done, is impossible; wheresoever, therefore, there are words intimative of a command to do anything, words intimative of a permission to do the same thing are superfluous and nugatory.

* A portion of the matter of law, considered merely in respect of the expression given to the side or aspect presented by the will of the legislator to the species of act which it takes for its object, may be distinguished into—1. Matter of a directive nature; 2. Matter of a sanctionative nature.

Directive matter is either *obligative* or *de-obligative*, i.e. permissive;—obligative matter is either *jussive* or prohibitive:—*de-obligative* imports either permission to forbear doing an act which by matter of the jussive cast had been commanded, or permission to do an act which by matter of the prohibitive cast had been forbidden.

Sanctionative matter is either penal (*i. e.* eventually punitive) or remuneratory:—either, for giving effect to directive matter of the obligative cast, it denounces eventual punishment; or, for giving effect to such directive matter as would be of the jussive cast, if the sanctionative part were of the penal cast, it announces, in case of performance, eventual reward.

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To the evil of redundancy, is apt in this case to be added that of unsteadiness in respect of the useless variety in which this species of imperfection is apt to exhibit itself.

Rule 2. — Where an act is already lawful, no matter of the permissive cast — no words having the effect of a permission, ought to be inserted: for of matter of this cast, the effect is by implication to convey an intimation, that by the law as it stood before the statute with this permission in it was enacted, the act in question stood prohibited; — which by the supposition is not true.

It is a mark of deplorable awkwardness and imbecility on the part of a legislator when he knows not how to make a law of his own, without giving a false and deceptious account of such laws as before his time have already been made by others.

The following masses of literary matter have on this occasion been marked out for omission on the score of surplusage in the act 45 Geo. III. c. 72.

1. Formularies of enactment, all but one; saving upon the 123 sections, 122 out of the 123.

2. The words "provided always."

3. All *non obstante* clauses: *ex. gr.* section 29, "any law, custom, or usage to the contrary thereto, in any wise notwithstanding."

4. After his Majesty, "his heirs and successors."

5. After the word *shall*, the word *may*, when applied to the same person.

6. After the word *required*, the word *authorized*.

7. After the word *shall*, both *authorized and required*.

8. Before the word *required*, both *empowered and directed*.

9. After *every person*, *all persons*.

10. After *any person*, *or persons*.*

11. After the word *forfeit*, the words *for every such offence*.

12. After the numerical title of a statute, the verbal title.†

13. For, *it shall and may be lawful*, and, *it shall be lawful to and for*, — substitute *may*, making the requisite change in the circumjacent words.

14. WHEREAS DOUBTS *have arisen*; — inserted frequently when the imperfection calling for correction was too manifest ever to have left room for doubt.

15. *Whereas it is expedient to* enact, &c. as if a persuasion of such expediency on the part of the legislator were not necessarily implied in the operation of enactment. This is one of the many instances of nugation.

16. After shall not do so and so, for example, *extend nor be deemed or construed to extend*.

To the head of *errata* may be referred all those peculiarities in the phraseology customarily observed in an act of parliament, whereby the language thus put into the mouth of the legislator is distinguished from that employed by everybody else.

Of these vices the actual fruit is oppression and pillage: what in each instance was in the mind of the draughtsman the intended result, and to the attainment of which his exertions were directed, is a question of psychology never worth resolving, and in general incapable of being resolved.

It would be a great error to suppose that this excrementitious matter is simply useless. The pretended object, and the only object that for the purpose of apology can be assigned to it, is certainty. But of certainty it never is productive — it is, on the contrary, an abundant source of uncertainty.

If on every occasion redundantly copious and wordy forms were employed, yes: then voluminousness on the part of the composition — useless vexation and expense on the part of him whose fate is disposed of by it, would be the only evil. But promiscuously and interconvertibly with this most voluminous formulary, on occasions exactly corresponding, are employed other formularies less and less voluminous. Of the most voluminous what is then the effect? To breed doubts concerning the import or the validity of this or that other formulary which in this or that particular is less voluminous.

In the view, and for the purpose of causing to be made known to divers persons — in divers manners — divers sets of facts, to the end that these persons, objects of his care, may be secured in the receipt of what is respectively their due, great, and assuredly by no means unsuccessful, are the pains which by a correspondently voluminous and various mass of regulations have been taken by the right honourable legislator in the last-recited act.

In the chain of information, amidst and after all this care, one link was left wanting; and that was a means of conveying to their knowledge, and into their hands, in a concise, compact, and, in a word, in a comprehensible and intelligible form, adapted to the state and degree of such intellectual powers as they might on reasonable grounds be expected and presumed to be in possession of, an intimation of what had there been done for them, and what on their parts was necessary to be known and to be done, in order to their reaping the benefit of all this care.

* With regard to the two numbers, the singular and the plural, — whether both shall be employed, and which, is a fit subject for grammatical rules, which might easily, and ought to be given by authority once for all.

† In other words, to the verbal title substitute the numerical.

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In the elaborate chain in question, this link, I say, is wanting. And why is it wanting? — to what cause is so material a deficiency to be ascribed?

The answer is incontrovertible: — To the sinister interest of the profession of the law.

In this as in every other quarter of the field of legislation, it ever has been, and still continues to be their interest, that the rule of action should be as little known and as ill known as possible — that the conception formed of it may be as imperfect, confused, and erroneous as possible.

On this account it is, that on the part of those masses of discourse which have been occupied in giving expression to it, it has been their interest to nurse and cultivate to the highest degree of perfection those vices, the exemplification of which has on this occasion been in some degree brought to view.

§ 8. *Remedies for Longwindedness.*

In the consolidation Prize Act, 45 Geo. III. c. 72, before referred to, an example may be found of longwindedness: — in five contiguous sections, Nos. 43, 44, 45, 46, and 47, and in one other, No. 108, which occurs at sixty sections distance, the general course of procedure in the high court of admiralty and the vice-admiralty courts, in the metropolitan and provincial prize courts, is prescribed.

Of these sections, the first, which is much more than equal to all the other five put together, was evidently, in the date of its formation, antecedent to most if not all the others.

In it the following are among the operations prescribed or brought to view, or spoken of as liable to have place: —

1. The preparatory examination — viz. the *usual* one; and by this one word usual, the certainty belonging to written law is drowned in the uncertainty inherent in the essence of unwritten law.

2. Monition, again the *usual* — and this usual monition must be the proper one; 3. Moreover it must be issued by the proper person, be he who he may; and 4. by another proper person executed; 5. but not till after request; 6. Claim; 7. Entry thereof in the usual form; 8. Attestation thereof on oath; 9. Giving of notice after the execution of such monition; 10. Security, giving thereof by the claimant for eventual costs, 11. Production of said preparatory examination; 12. Production of documentary evidence; 13. Eventual oath of non-existence of documentary evidence; 14. Sentence eventual of discharge or condemnation; 15. Giving further time for entering claim; 16. Giving further time for finding security, for something or other, if one could but tell for what; 17. Sentence, giving it once more; 18. Eventual examination of witnesses; 19. Giving in pleadings by the parties; 20. Admission thereof by the judge.

In this list we have twenty operations, but they are not above half the number of operations brought upon the carpet, neither will there be found in this enumeration above half the matter, including a quantity of surplusage, with the quantity of obscurity and ambiguity thereby generated, and thereunto appertaining, contained in this section.

It is an attempt to force together the contents of an entire system of procedure into one sentence. With as much reason, and with similar utility, might the whole of Coke-Littleton have been squeezed into one sentence, or the whole of a Serjeant's-Inn dinner have been mashed up together into one dish.

Supposing a man either unable or unwilling to make himself understood, but at the same time under an obligation of appearing desirous of making himself understood, — this is one of the ways he would take for effecting his purpose, and a more effectually conducive way it is not in the power of man to take.

The remedy for this longwindedness is to be found in breaking down such complicated enactments into separate parts; but in so doing, it will be found that the length of the whole composition will be increased — the brevity of the parts, and of the whole, antagonize. Perspicuity will, however, be gained by lessening the excess of the grammatical sentence over the logical proposition.

For putting into a rational and intelligible shape the contents of this single section, twenty sections would scarcely suffice, and each would require its full complement of words.

With respect to the structure and length of sentences, the following proposition and rule may be laid down: —

Proposition: The shorter the sentence the better.

Rule: Minimize the length of sentences.

Reasons: — 1. The shorter the sentence, the clearer is it to the eyes of the reader: — the clearer, that is to say, the more free from obscurity — the more easily apprehended by the conception — the more easily retained in the memory. 2. The shorter the sentence, the clearer is it in the eyes of the legislator and the judge. For the purpose of eventual supervision and amendment, much clearer will it be to the eyes of the legislator, for the purpose of interpretation to those of the judge.

To be perfectly clear to the conception, the judgment, and the memory, every distinguishable proposition must be presented by itself, unconnected with every other. Exceptions excepted, objects more than one cannot be closely examined at one and the same moment. Exception is, when two objects are to be confronted and compared with one another: in that case, the mind vibrates from

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the one to the other with the rapidity of thought; and as in musical sounds, before the impression produced in the sensorium by the first has ceased, that produced by the second is commenced.

By the clearness and simplicity thus contended for, no bar is opposed to comprehensiveness; on the contrary, the more comprehensive the sentence or proposition is, the shorter it may be. Whatsoever be the extent to narrow it, addition to the number of words contained in it is necessary.

True it is, the shorter the several sentences, the longer will and must be the aggregate composed of them. Take any sentence or proposition whatsoever, — by the insertion of a single word in it, the effect of another sentence may be produced. Why? Because to compose a sentence, requires the conjunction of divers of the parts of speech; and when once expression has been given to a complete sentence, every word added to it receives as it were the benefit of all the several words which it finds entering into the composition of the sentence to which it is added.

But to the difficulty in respect of conception, judgment, and reminiscence with relation to the whole, no addition is made by the addition made in this way to the voluminousness of it. By an index, the eye is as promptly conveyed to the passage wanted in the largest folio, as in the smallest duodecimo. Just so is it in the case of a dictionary. If by the lettering at the back you are informed, without need of opening and searching the several volumes, in which volume the word, the explanation of which you stand in need of is contained — a dictionary of twenty volumes is not more difficult to consult, than a dictionary of one would be.

When the objects, whatsoever be their multitude, are presented to the mind one by one, the mind finds itself in a state of comparative repose; — there is nothing to hurry it in its course; — for any length of time it gives its undivided attention to each one. When, in the course of a lengthy paragraph or section in an act of parliament, objects, propositions, are presented to view by dozens, scores, or hundreds, it is hurried off by each from every other: — amongst them it finds no rest — it is in a state of bewilderment; — in relation to no one of them can it obtain any clear conception, form any clear judgment, retain any clear reminiscence.

The following rules will further tend to prevent the evil of longwindedness: —

1. Avoid repetitions from habit of useless formulas; as in English practice.

2. Repeat not self-evident propositions: — Ex. "*Whereas it is expedient*," &c.

3. Lists of species, once given, form a generic term, which afterwards substitute.

4. Exceptions excepted, let the masculine singular comprehend both genders and numbers.

5. Denominate, enumerate, and tabulate principles. It facilitates reference, and thereby contributes to conciseness.

6. Employ abbreviative words: any such word, explained once for all, if need be by definition, performs in legal language the functions of x and y in algebra. Examples: Maximize, minimize, demoralize, disintellectualize, eulogistic, dyslogistic, and the names of functions.

7. After the verb governing, interpose between it and the list of substantives governed, the words "*as follows*," with a punctum; — then give to each item a separate line, preceded by a numerical figure.

§ 9. *Helps to Intellection.*

BISECTION I.

1. *Of making Divisions.*

Among the devices employed by the legal tribe for the preservation and increase of uncertainty, and voluminousness, and uncognoscibility, — one is the forbearing to employ division and numeration, on the occasion and for the purpose of reference. Break a law down into parts, and affix a different number to each part, — whatsoever be the part you have occasion to speak of, naming the number by which it is distinguished accomplishes the purpose with the utmost brevity, and at the same time without danger of mistake. To this obvious and most universally practised mode, substitute, as is done in English statute law, an attempt to describe the part in question by words expressive of the subject-matter, or the purport of it, — you send a man on each occasion to hunt over the whole statute for whatever he is in quest of, after which it remains matter of doubt with him, what are the parts that in case of litigation would be understood to be comprised under the necessarily loose description so employed.

The more numerous the statutes thus referred to, and the more voluminous the bulk of each statute, the greater is the uncertainty and the vexation — the greater the unnecessary consumption of time and labour in hunting over them — and the greater the probability that, of all this consumption of time and labour, nothing better than ultimate and irremediable uncertainty may be the fruit.

In the case of the statute 45 Geo. III. c. 72, there are no fewer than fifty of the small and closely printed pages of which the authentic edition of the statutes is composed.

In this statute, in the paragraph marked VIII., it is enacted, "That all regulations herein contained respecting prizes, shall apply to all cases of bounty-money granted by this act, and of salvage upon recaptures from

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his Majesty's enemies." Would you know what those regulations are? Here, instead of a few figures, are no fewer than fifty of these folio pages to pore over, and in these fifty pages, no fewer than 123 sections.*

The choice of the mode of remedying this evil, is not by any means a matter of indifference. Perspicuity and brevity are in no considerable a degree dependent upon it.

The objects which it is desirable should be kept in view in making such division are — 1. Facility of reference; 2. Facility of amendment: — of reference by the individual reader, whatsoever may be his place in the community; — of amendment by the legislator.

The more numerous the successive acts of division and subdivision, the more numerous will be the general denominations of those aggregates which are respectively the results, and the more numerous those denominations, the more instructive will be the table of contents formed by the printing on the same surface, and thus presenting to the eye at the same time the aggregate number of them. The more numerous the points of agreement and difference between the several objects, the better will the subject be understood; since it is no otherwise than by means of these points of agreement and difference between its elementary parts, that a subject of this sort is understood.

The process of subdivision cannot be carried too far for use; — for let it be ever so dilated, nothing can be easier than to contract it: — for effecting the contraction, nothing but simple elimination is necessary.

The further it is carried — the narrower and more particular the mass of objects characterized by the denomination given to the aggregate, — the more particular, the nearer it is to individuality — the clearer and more complete is the conception which, to the understanding of the person in question, it will present.

Bonaparte, in his Code, has perhaps gone further in this track than any other legislator; but for understanding the more clearly what in this way has been done by him, it will be of use to wait till an explanation has been given under the next head.

BISECTION II.

Of Denominating the Results.

On the occasion of each glance there may be a convenience in seeing instantaneously, by means of the several denominations, to what degree the process of subdivision is advanced. For accomplishing this object, the numeration table affords an expedient, and it is the only one.

Rule: Indicate, by a numerical figure, the number of divisional operations by which the result in question is produced — the figure in a broad type struck through by a thin S.

Rule: To divisional denominations substitute the numerical only. The following names are already in use for the denomination of the results of such operations: — section, bisection, trisection, quadrisection, and so on. For the result of the last divisional operation, the word *article* may be employed, as being now in use.

Rule: When lists require to be given in an article, give each item a numerical denomination, and refer to them by such denomination.

The more numerous the acts of division, the greater the mass of literary matter necessary to the giving expression to the results. Suppose it to have extended to a certain length, so numerous will be the words, that if given at length, a whole line or more may be necessary in one part for referring the reader to this or that single word or matter. Hence comes the practice of substituting to the word at length the first syllable, or the first two or three letters of it. The syllable has the advantage of being capable of being pronounced, — the letters, if they do not form a syllable, fail of putting a reader in possession of this advantage.

§, 2 §, 3 §, 4 §. By this mode of reference, all, it is believed, will be done towards accomplishing the purpose, that the nature of things will allow to be done.

We are now prepared to recur to the consideration of Bonaparte's codes. The number of the codes is five, besides the code of costs for the judicatory called the Cour Royale de Paris. Of the results of the several acts of division in these codes, the denominations are as follows, in the following order: —1. *Livre;* 2. *Titre;* 3. *Chapitre;* 4. *Section;* — then comes the unit to which in the

* By the reference thus made to the number of sections, a contradiction will naturally appear to be given to the general proposition which it is employed to exemplify and illustrate. But it is only a contradiction in appearance. True it is, by somebody or other, nobody knows who, before each paragraph, in the printer's sense of the word paragraph, a number is prefixed; but for any such purpose as the one here in question, the number might as well not be there. It is no part of the act. It has not received the mysterious touch of the sceptre.

Wo worth the wretched wight, who, in speaking of any such portion, should presume to denominate it by the name thus given to it. With what inexorable severity, with what appalling indignation, would his professional reputation be torn to rags and tatters by an Eldon or an Ellenborough! what notes and tones of admiration would be called forth by the grossness of his ignorance! Not that it is in the nature of things that the eye of any noble and learned lord should ever be pained by any such abomination: it would be blotted and cast out with condign ignominy from the speaker's office — it would be a laughing-stock among the clerks.

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text no denomination is given, but which in the references is denominated, 5. *Article*, or for shortness, Art.

Article is the denomination of the result of the last act of division which has a name; but in some instances, within the article are found divers parts or clauses not denominated, but distinguished from one another by numbers; — and thus also in the Code Pénal, beginning with Art. 402, the article is divided into other parts, to which no denomination is given in words at length, but prefixed to each division is the character usually employed in lieu of the word section, namely, the double S — §.

Applying the last proposed mode of denomination to the results of the several acts of division in this code, the denominations assigned to the several acts of division by the numeration table would be, instead of *livre*, section, §; instead of *titre*, bisection, 2 §; instead of *chapitre*, trisection, 3 §; instead of section, quadrisection, 4 §; instead of article, quinquisection, 5 §.

Instead of any such principle of division being followed in these codes, in each code the articles follow one another in a series, which commences from the first. The numbers of the articles in each code are as follows: —

1. Code Civile,	2281
2. Procedure Civile,	1042
3. Code de Commerce,	648
4. Code d'Instruction Criminelle,	643
5. Code Pénal,	484
Besides the "Tarif des fraix," &c.	175

In each code, only from the first article in the whole code are the ensuing articles numbered: — no fresh series is commenced in any of the subdivisions.

Such is the method, and now for the inconvenience of it.

In a new edition of any of these codes, between the first and second of the articles suppose matter meant to be inserted, and inserted accordingly; and in consequence the several other articles, 2280 in number, the numbers all changed: what would be the consequence? That of all the several references made in the new edition, not one would serve for any preceding edition; so that these editions, whatsoever were their number, would be rendered all of them nearly unfit for use: — nor can any limits be assigned to the practical mischief capable of being produced by the false reference if taken for true.

BISECTION III.

Of the employment of the substantive-preferring principle.

By the substantive-preferring principle understand that which recommends the employing, in works of the didactic kind, as far as may be, a substantive in preference to the corresponding verb — a substantive, or what comes to nearly the same thing, an adjective with the substantive *principle* attached to it.

On many occasions a verb of peculiar import, with or without the addition of tense or mood, or both, or a correspondent noun of the same root, accompanied with what may be called a word of common or subservient use, may be indiscriminately employed; — thus we may either say, to give extension to, or to extend — to give denomination to, or to denominate — to straighten, or to make straight, — or give straightness to.

In these cases there is an advantage in employing the noun instead of the verb. Be it the name of what it may — a real entity or a fictitious entity, the noun will in every case be a denomination of something: that something, be it what it may, will on this or that occasion be an object or subject-matter of consideration, and attention, and examination. For this purpose it may be necessary, that by the mind, for a more or less considerable portion of time, it should be kept in view; in the form of a noun — to wit, a noun substantive, it may be kept constantly in view for any length of time that can be required.

Whilst thus in view, it is capable of being taken for the subject of what the logicians call predication: — any quality may be spoken of as existing in it, as belonging to it. Example: extension, fixidity, velocity, beauty, deformity.

In this state, any quality at pleasure, and at leisure, may be spoken of as existing in it, as being given to it or taken from it. In a word, it may be kept in contemplation, may be made an object of study; and if the nature of it be to admit of such an operation, of examination for any length of time.

Not so when the idea is presented in the form of a verb. In this case it is mixed up with other words in the form of a sentence or proposition, more or less complex. The import of it is in such sort covered, disguised, and drowned, that no separate nor continued view can be taken of it. Where a substantive is employed, the idea is stationed as it were upon a rock: — where no substantive is employed, but only a verb, the idea is as it were a twig or a leaf floating on a stream, and hurried down out of view along with it. When you have said, "I will give extension or elevation to an object in question," I can take up the quality of extension or that of elevation, and give to them respectively whatever consideration and examination the nature of the case admits of, and appears to require: but if what you have said be, "I will extend the object," there is no extension, no elevation, nothing I can take up or lay hold of.

As a companion to the noun, for the purpose of rendering it a fit substitute for the verb which the purpose of the sentence re-

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quires, a particular species of verb has been mentioned: it may be termed an auxiliary verb, by analogy to those fragments of verbs — will, shall, may, can, might, could, would, should, — that are in use to be employed for the like purpose. On the present occasion, the verb *to give* has been mentioned as one that is in use to be employed for the present purpose. It may be employed as auxiliary, for example, to any substantive expressive of any species of quality, as expressed by the terminations *ite*, *ants*, and others of like import.

The employment given to it will not however appear natural, unless the quality present itself as being either desirable, or at any rate an object of indifference. It is natural to speak of giving elevation to an object, or extension — it is not equally so to speak of giving depression to it, or limitation. In this case, you would rather employ the verb *to apply*, than the verb *to give*.

A catalogue of this species of auxiliary verbs, accompanied with a catalogue of the nouns substantive to which they are in use to be employed as auxiliaries, is an instrument of elucidation that remains to be constructed, and by its usefulness may perhaps be found to pay for the trouble.

A use somewhat similar may be made of the term *function*.* Each proposition in which it is employed, is the equivalent of a multitude of propositions of unknown length and ever variable and varying tenor, any one of which might have been employed to the same purpose; but which, if employed, would have exhibited no feature of determinate and apprehensible resemblance one to another.

Of this word it will be seen elsewhere† how useful it is as an instrument of useful arrangement; — to no such use would its equivalents in the verbal form be found applicable. The desirable properties which these forms of expression contribute to discourse are — 1. Clearness; 2. Conciseness; 3. Recollectedness — *i. e.* giving facility to the recollection of the idea designed to be conveyed. These forms of expression are subservient to distinctness, by placing in the clearest light the points of difference and separatedness, as well as the points of resemblance and coincidence between each object and every other.

The way in which the use of the word *principle*, with the appropriate adjective, is conducive to *conciseness*, is by substituting those two words to the correspondent rule or rules that may be laid down in explanation of the principle so denominated.

When once explained, these two words serve for the giving expression to one sentence or more. Not less subservient to the purpose of retention is this formula than to the purpose of conception, and expressive for the purpose of communication. You cannot anchor in your mind a sentence, as you can a single term.

The contribution thus made to *conciseness* is analogous to that made by algebra: *i. e.* the algebraical mode of expression, on the occasion of those discourses which have for their subject-matter quantity as expressed by number, abstraction made of figure.

§ 10. *Remedies for Miscollocation.*

For the prevention of miscollocation, little can be done besides noticing such faults as have been observed, that they may serve as beacons for the avoidance of the like faults in future.

The following are among the cases of miscollocation which have been observed: —

Between a pronoun-relative and its antecedent, interposition of another word capable of bearing also the relation of an antecedent.

Placing a negative adverb in contiguity with a subject-matter other than that to which it is intended to be applied.

Placing a modificative clause so as to be applicable to an unintended principal.

Placing a pronoun-adjective-relative without a preceding substantive: the substantive being left to be imagined and allotted by the reader. Example: *This* is only, &c., when there is no preceding substantive with which *this* can combine. Evil resulting, — obscurity, the subject of predication being wanting.

Not presenting to the eye in writing, and to the ear in speaking,‡ in the first place the principal object or subject-matter of the proposition.

Rule: Whatever be the principal object which your sentence is designed to bring to view, bring forward, as early as you conveniently can, the word employed in the expression of it: — if you can make the sentence begin with that same word, so much the better.

If a word expressive of another idea come before it, the mind is in the first instance put upon a wrong scent; and a sort of correction and partial change of conception must have place, before the idea meant to be conveyed is apprehended.

By the first-mentioned mode of collocation, the idea of spiritedness in the discourse is suggested, and the reader, if not set against it by usage, is better satisfied; the idea meant to be conveyed being apprehended on the instant, and without further trouble. In the other case, the idea of insipidity and heaviness in the discourse presents itself: unable for sometime to conceive what it is

* It has thus been employed throughout the *Constitutional Code*, which may be referred to as an example of the use capable of being made of this form of speech.

† *Constitutional Code.*

‡ In speaking, placing the accent or emphasis upon a syllable other than that which constitutes the characteristic part of the word. In pronunciation deviating from analogy without use.

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that is meant to be conveyed to him, the reader finds himself under the necessity of crawling on, and poring on, in quest of it; and till he have arrived at it, either proceeding on a wrong ground in the course of his reflections, or continuing in a state of uncertainty and perplexity.

Rule: Sub-articles excepted, include not in one article two sentences so unconnected as to be understood one without the other.

Reasons: For the reader might consider the two as one proposition, and reference cannot be made to one without the other.

Rule: In a principal proposition, imbed not exceptive or otherwise modicative clauses more than one.

Rule: Of exceptions give notice at the commencement of an article; for this purpose, the formula *exceptions excepted* may be used.

Reasons: 1. It secures to the general proposition, whatsoever it may be, the most concise and clearly apprehensible expression which the nature of the case admits of.

2. Being placed at the very commencement of the sentence, it gives a sort of *warning* which has the effect of anticipating and keeping the door of the mind shut against all those false conceptions, which in the first instance, and for the time, would be among the effect of the proposition, if presented in the first instance, in a degree of extent which was not intended, and which as the sentence advanced would receive contradiction. In the way here proposed, the erroneous conceptions in question are from the first excluded:—in the way ordinarily pursued, they are, in the first place, let in altogether; and then, one after another, ejected.

3. In this way the door is left open, a door of the most simple form, at which in any number successive amendments may be let in: and this without any disturbance offered to any other part of the ordinance. For the purpose of judging of its completeness—judging whether an article to this or that effect might not with advantage be added to it, the list of these exceptions, in conjunction with the general proposition out of which they are taken, may at any time and at all times be surveyed at leisure.

The following mementoes will further tend to secure a good collocation:—

Let the grammatical form of sentences in which *statements* are conceived be as simple as possible.

Avoid the hypothetical form in the operation of statement;—especially the complex hypothetical form, in which several *suppositions* are strung together, before the proposition makes its appearance.

Where hypothetical propositions occur, break them down into categorical ones: the following are forms for doing this:—

1. Before the proposition prefix the several suppositions, each by itself, under the head of *suppositions*. This is where the enumeration of the suppositions precedes the statement of the proposition.

2. Where the proposition comes first, then subjoin the suppositions, with the word case before them; as thus, Case 1, Case 2, &c.—*N.B.* In this latter mode of statement, the suppositions are put *disjunctively*,—in the former, *conjunctively*.

CHAPTER VII.

OF LANGUAGE.

§ 1. *Of Technical Language.*

THE maximum of notoriety being the object, not only the matter but the form—not only the arrangements themselves, but the language employed in giving expression to them, will, if that object have been attained, have been such as is conducive to it. Considered in this point of view, language used in law is of two sorts—1. Natural; 2. Technical.

The word *technical*—the appellative by which the denominations employed in designating the names of instruments and operations in the language of English jurisprudence are commonly designated, tends to convey an erroneous conception, pregnant with an error from which there may be a use in keeping the mind upon its guard. It presents an ambiguity, under favour of which the mischievousness of the object will, till it has been exposed to view, in the minds of most, if not all readers, be but too likely to be screened from notice. Not only are the denominations in question *liable* to be productive of evil, but the evil they are actually productive of is so great as to be beyond calculation.

Of the non-notoriety of the law, the mischievous effects are all-comprehensive; for by it, and in proportion to the extent of it, the law is prevented from being productive of the good effects it is calculated to produce: it is prevented from hindering the bad effects which would not have had existence, had the law been known. The individual who, had he known of the existence, and formed a correct opinion of the purport of the law, would have availed himself of it, if it were a law that gave him a right—or would have abstained from the act, if it were a law by which the performance of such act is prohibited,—loses his right in the one case, and incurs the penalty of the law in the other case.

Now, for every person but the few to whom the import of these denominations styled technical, is made known by a more or less long course of attention, observation, and experience, the existence as well as the tenor of the instrument in question, is by means of this technical language, as it is called, but too effectively and generally concealed.

How then, it may be asked, how is it that

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the mischievousness of this class of denominations is concealed from ordinary eyes by means of this appellative? Answer — In this way: by confounding this class of words, which belongs exclusively not only to jurisprudence, but in a more especial manner to English jurisprudence, with the corresponding words belonging to other branches of art and science —words from the use of which no effects but what are purely beneficial are produced, — a veil is thrown over the mischief produced by this legal class, and an imputation applicable with exclusive propriety to the words of this noxious class is but too apt to extend itself to the words belonging to those unnoxious and purely useful ones.

The case is, that in the language of every branch of art and science that can be named, a more or less extensive stock of words of a peculiar nature, in addition to all the words in familiar use, is an indispensable appendage: applied to these, what the appellation technical imports is nothing more than peculiar, as above, to some branch of art and science; to wit, in contradistinction to those which, being likewise employed in discourse relative to that same branch of art and science, have nothing to distinguish them from the words in universal use belonging to the common stock of the language; — or the import of them, from the import attributed to those same ordinary words. But the difference between these jurisprudential peculiar words, and the other peculiar words, is this: in the case of the other peculiar words, the deviation from ordinary words is matter of absolute necessity, and on the occasion of framing them the whole attention and skill possessed by the framers was commonly employed in the rendering them as expressive as possible; whereas in the other case, the deviation from ordinary language being as wide commonly as can be imagined, — no attention has been paid to render it expressive, by rendering it as near akin as possible to the words appertaining to that same common stock: — to that end no attention whatsoever was employed, the attention, if any, applied to the subject, having the direct opposite end, viz. that of rendering them as inexpressive as possible, as unlikely as possible to convey correct conception; — the only purposes to which they are applicable or designed to be applied, are either conveying to the persons in question no conception at all, or if any, such as shall have the effect of leading them into error, either productive of burden to the persons thus deceived, or benefit to the deceivers.

Terms of art, jurisprudence must have as well as every other branch of art and science. But in English practice, the terms of art are to what they ought to be, what the terms of astrology are to the terms of astronomy.

In a word, in the case of every other branch of art and science, with few exceptions, and those not belonging to the present purpose, to the words which are peculiar to it, as being known to those individuals alone who are more or less conversant with the matter of it, the appellative technical, which in the original Greek signifies neither more nor less than appertaining to art or science, may, not only with indisputable propriety, but without leading into error, be applied, were it not for the danger of inculcating the conception that these words partake of the noxious quality which belongs to those technical words which are peculiar to jurisprudence — words from which they are essentially different, as well in respect of the effects actually produced, the effects intended to be produced, and the motives by the operation of which the intention was produced: in their effect as expressive as they could possibly be made, and the explanation of them by means of an equivalent expression taken from the body of the language made as extensively notorious as it can be made, and so intended to be; — the motive to which they are indebted for their existence being a desire to render the matter of the art or science to which they belong as extensively known as possible, — and this on account of the honour, or profit, or both, expected in return for the benefit so conferred.

Opposite in all these several particulars is the case of jurisprudential technical terms: — actual effects, everywhere relative ignorance, or what is worse than ignorance, error. Intended effects the same: — desire by which, in the character of motive, the endeavour was produced, the profit looked for, and but too copiously derived, from the ignorance and error so produced, and the reputation for wisdom which by this artifice the people have been led to ascribe to the inventors of this system, and the benevolence which they have at the same time been led to regard that same wisdom as having for its accompaniment. In a word, of the peculiar language in the case of physical science, the words are expressive, and so intended to be: — in the case of jurisprudential science, the words are either simply inexpressive, thus securing the continuance of ignorance, or what is worse, viz. for the people, but proportionably better for the inventors, productive of error, the effects of which, in so far as they have place, are mischievous.

§ 2. *Of the importance of improvement in Legal Language.*

We have already seen that the technical terms of jurisprudence are either inexpressive, or calculated to produce error: the necessity of improvement cannot therefore be denied, except by those who are blinded to its importance by interest, or interest-begotten prejudice.

Proportioned to the uncertainty attaching to the import of the words employed upon

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legal subjects, will be the uncertainty of possession and expectation in regard to *property* in every shape, and also the deficiency of political *security* against evil in every shape: proportioned, therefore, to the *fixity* given to the import of those same words, will be the degree of security for good in every shape, and against evil in every shape. Until, therefore, the nomenclature and language of law shall be improved, the great end of good government cannot be fully attained.

In medical art and science, improvement is rapid and extensive at all times and in all places: in legislation and jurisprudence, everything is either retrograde, or at best stationary.

The cause is no secret. In medicine it is the interest of every practitioner to promote improvement, and to promote it to the utmost, to make whatsoever addition to the stock his faculties admit of his making: — of no judicial practitioner is this the interest — his interest is directly opposite.

In medicine, not only the nosology of the subject is constantly receiving augmentation, but also the terminology: — in legislation and jurisprudence, everything, to make the best of it, is at a stand.

But he who will not be at the pains of making, nor so much as of adopting, new expressions, must go on with the old ones alone, and consequently with all the errors which, being associated with, are established by the old ones.

And, as amongst other things, all political abuses are thus established and kept on foot and in estimation by these old ones — by that part of the language which has been employed in the establishment of these same abuses; hence, on the part of persons so circumstanced, the horror of innovation in language forms a natural accompaniment to the horror of innovation in law: and hence, on the other hand, all persons desirous of the improvement of legal institutions must also be desirous of the improvement of legal language.

In so far as correct notions are substituted to incorrect ones, denominations in some respects new must of necessity be employed: denominations by which none but incorrect notions have ever been designated and suggested, never can, without alteration, be made to serve for the designation and conveyance of correct ones.

Language has, in the art of healing as applied to the body natural, advantageously received the form of a branch of art and science: it is high time, that by the like operation it should be, as applied to the disorders of the body politic, raised to that same elevation in the scale of dignity.

By an elevation in the scale of art and science, understand anything rather than elevation in the scale of difficulty. Not to maximise difficulty, but to minimize that obstacle to usefulness and human felicity, is the object with every true lover of art and science. But without *novelty* in language, neither in this nor in any other portion of the field does the nature of things admit of any such elevation, or of any considerable addition to the stock of matter thus elevated; and without closeness and continuity of attention in some proportion to the novelty, it is not possible that anything which is taught—anything, however well taught, as well as deserving to be taught, and held in everlasting remembrance, should be learned.

No new propositions, howsoever useful, can receive expression unless it be by new words, or new application of already established ones; — *i. e.* by using them on occasions on which they had not been at all, or had not been commonly employed.

Hence a sort of postulate necessary to be put forward in legislative art and science, in imitation, for the first time, of the practice in the posological branch of physical art and science.

Postulate: That all new words and phrases necessary to the substitution of truth to error — of clearness to obscurity or ambiguity — conciseness to verbosity,—be coined, uttered, and received.

Let the mint of the greatest happiness — the mint of reason and utility, be the mint in which they are coined.

What I am far from saying is, that all who are found to start and urge these objections are enemies to human happiness and improvement; but what I do say is, that all who are enemies to human happiness and improvement will be found to start and urge them.

In so far as the conceptions hitherto entertained are inadequate or erroneous, necessary to the communication of correct and adequate ones is a correspondently appropriate and adequate, and therefore unavoidably a novel system of vocabulary.

To the words of which such vocabulary is composed, one condition is at once requisite and sufficient. This is, that without incorrectness, ambiguity, or obscurity, they carry to the conceptive faculty of the reader the idea meant to be conveyed, either at the first mention, antecedently to all definition, or other exposition, or at any rate, after such exposition has been heard or read.

For this purpose it will, generally speaking, be sufficient if, in the case of each word, other words derived from the same root are familiar to the reader in question — familiar, and at the same time expressive of clear conceptions, or if for the explanation other words in a sufficient degree synonymous to them are subjoined.

In what degree, for correct conception, or even for the possibility of obtaining any con-

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ception at all of the object in question, men are indebted to aptitude of nomenclature, persons in general are very little aware.

Throughout the whole field of that branch of the mathematics in which forms are put out of consideration, what is therein done, is done altogether by nomenclature — by abridgment given to the signs by which the idea is expressed. Thus, in common arithmetic, by means of the Arabic names of numbers, operations are performed, which, by words at length, without that instrument of abbreviation, could scarcely have been performed; whilst by those instruments of ulterior abbreviation which are afforded by algebra alone, operations are performed which could never have otherwise been performed — results obtained which could never have otherwise been obtained.

True it is, that of all these operations there is not one to the expression of which words and phrases at length are not completely adequate; but in many an instance, such is the quantity of literary matter that would be accumulated, that ere the result could be realized, confusion would ensue, the mind would be bewildered, and conception lost.

In branches of art and science comparatively frivolous, and for the accommodation of those who amuse themselves in the cultivation of these branches, — in a word, in the several branches of natural history, — no scruple is made, not only of introducing new denominations, but of composing a vast nomenclature altogether of such new denominations — fruits of the innovation principle.

For the purpose of morals and legislation united, the number of new denominations requisite is comparatively inconsiderable: these new denominations will mostly be taken from the Latin, — from that language from which most of the words of the languages of the most civilized nations are derived.

In the natural history branch, the language from which the new denominations are borrowed is the Greek — a language with which none except the extremely few have any sort of acquaintance, and which has no root in the language of the people. There ought, therefore, to be less objection to the introduction of new terms into the branches of legislation and morals, than into the branch of natural history: and there would be less, but for that horror of innovation by which the tyranny of the few over the subject-many may be repressed.

§ 3. *Prejudices adverse to improvement in Legal Language obviated.*

On this occasion we may remark how disadvantageous is the situation of him whose endeavour it is, in this line of service, to give increase to the greatest happiness of the greatest number, in comparison with that of those whose endeavours are exclusively directed to the giving increase to their own personal greatest happiness, and thence to that of the class to which they belong, at the expense of the greatest happiness of the greatest number; and thence and thereby to the maximizing the defalcation from the aggregate stock of happiness: — in other words, how difficult and disadvantageous the task of the friend of the people, in the character of the would-be improver of the law, is, in comparison with that of the enemy of the people, in the character of the fee-fed practitioner and fee-fed judge.

The nomenclature devised in a barbarous age, by a mixture of stupidity, ignorance, error, and lawyer-craft, has, by force of irresistible power, under favour of interest-begotten and authority-begotten prejudice, been interwoven in the language, and been rendered the subject-matter of instruction to the highest educated classes, and the object of admiration and veneration to all classes: — nay, even the more flagrant its inaptitude, the more intense the veneration: for the more flagrant the inaptitude, the greater the labour necessary to the attainment of that incorrect and incomplete conception of the ideas attached to it, which the nature of them admits of; and the greater the labour a man has bestowed upon any subject-matter, be it what it may, the greater the value which he of course attaches to the fruits of that labour, whatsoever they may happen to be.

Thus it is, that while on account of its antiquity the most unapt nomenclature which misplaced ingenuity could devise is an object of favour and veneration, the most apt that well-placed ingenuity can devise will as naturally be an object of aversion and disgust: — inexorably averted from the idea of the new appellatives, the attention of the reader will confine itself to the novelty, and in that novelty will find an adequate as well as an efficient cause for those sentiments in the prevalence of which, instead of reward, punishment will, from the same source, be found the lot and the retributive reward for his labours by the benefactor of mankind.

Necessary, indispensably necessary, to correct, complete, and clear conception, is a correspondently correct, complete, and apposite nomenclature. Never to the purpose of conveying correct and complete ideas can any locution be adapted, by which no ideas but such as are incorrect, incomplete, and confused, have as yet ever been conveyed. To the acquisition of new instruction, necessary, indispensably necessary, to a correspondent extent is on the part of the instructor the framing — on the part of the learner the learning — of a new language.

In every other branch of art and science, universally and without exception is the necessity felt. Esteem and gratitude on the part of the learner is invariably the consequence —

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invariably part and parcel of the recompense of the teacher.

Take, for instance, the art and science of chemistry, and the improvement made in its nomenclature by Lavoisier. Not less extensive than just was the tribute of admiration and applause bestowed upon that illustrious man, and the no less illustrious partner of his bed, for that rich product of their conjoint labours in that branch of art and science. — Think of what chemistry was before that time — think of what it has become since!

Think of the plight that natural history and natural philosophy would have been in, had a law of the public-opinion tribunal been in force, interdicting the addition of any terms belonging to these branches of art and science, to the stock in use at the time of Lord Bacon. But the employment of the terms then in use in the field of natural history and natural philosophy, is not more incompatible with the attainment and communication of true and useful knowledge in that field, than the employment of the terms now in use in the field of jurisprudence is with the attainment and communication of the conceptions and opinions necessary to the attainment of the only legitimate and defensible ends of government and legislation.

The division of the qualities of plants into hot, cold, moist, and dry, each in a scale of degrees, was not more incompatible with correct, complete, and useful conception of the various properties of the subjects of the vegetable kingdom, than the still established division of offences into treasons, præmunires, unclergyable felonies, clergyable felonies, and misdemeanours.*

The corruption ascribed by the lawyer-branch of the flash-language, to the blood of those whom, on this or that occasion adverse fortune has placed on the losing side in a contest between two candidates for the faculty of sacrificing to the fancied felicity of a single individual the real happiness of twenty or a hundred and twenty millions — as a specimen of this nomenclature, with the atrocious tyranny involved in it, will afford to all posterity a melancholy proof of the state of corruption in the hearts of those who have given creation, preservation, and extension to that tyranny, and in the understandings of the deluded people who could remain unopposing victims of it.

Yes! within the memory of the author of these pages, the population of Great Britain, to the number of about twelve millions, was divided into two not very decidedly unequal halves: the one composed of those whose fondest wishes centred in the happiness of being slaves to a Scotchman of the name of Stuart; — the other of those whose wishes pointed in the same manner to a German of the name of Guelph. Of the twelve millions, six were devoted to extermination by the lawyers on one side; — the other six by the lawyers on the other side. In the aggregate mass of the blood of the whole population, not a drop that was not in those days in a state of corruption, actual or eventual, according to the system of physiology established for the benefit of most religious kings, by learned lords and learned gentlemen.

Scarcely of the whole number of those in whom, according to Blackstone's language, the capacity of committing crimes had place, would a single one have escaped the having his or her bowels torn out of his or her body, and burnt before his or her face, supposing execution and effect capable of being given, and given accordingly, to the laws made, under pretence of being found ready-made, and declared for the more effectual preservation of loyalty and social order.

To whatsoever particular language the aggregate mass of discourse in question belongs, it will undeniably be in the greater degree apt with reference to the uses of human discourse taken in the aggregate, the more it abounds with words by which ambiguity and obscurity are excluded, or with words by means of which fresh and fresh degrees of conciseness are given to the body of the language.

Every language being the work of the human mind, at a stage of great immaturity, reference had to the present state of it, hence it is, that in every language, the most apt, or say the least unapt, not excepted, the demand for new words cannot but be great and urgent. In some of the departments of the field of language, including the field of thought and action, and the field of art and science, no reluctance at all as to this mode of enrichment has place: — on the other hand, in others such reluctance has place in a degree more or less considerable. Of this field, the portion in regard to which this reluctance seems to be most intense and extensive, is *that* which belongs to morals in general, and politics, including law and government, in particular; — of this reluctance, the inconsistency, and the evil effects that result from it to the uncontrovertible ends of human discourse, are apparent.

The opposite of that useful quality, the degree of which would be as the multitude of apt words associated with clear ideas — with ideas of unprecedented clearness, and introduced at a still maturer and maturer stage of the human mind, is a quality for the designation of which the word *purity* has commonly been employed. No sooner is the idea for the designation of which this word is employed brought clearly to view, than it is seen to be

* The distinction of clergyable and unclergyable was abolished by 7 & 8 Geo. IV. c. 28, § 6. — *Ed.*

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that which is aptly and correctly designated by the word *indigence*. This word *indigence*, wherefore then is it not employed — for what purpose is the word *purity* substituted to it? Answer: For this purpose, viz. the causing every endeavour to render the language more and more apt, with reference to the uncontrovertible ends of human discourse, to be regarded with an eye of disapprobation. *Purity* is of the number of those words to which an eulogistic sense has been attached — words under cover of which an ungrounded judgment is wont to be conveyed, and which are thence so many instruments in the hand of fallacy.

Of the use made of the word *purity*, the object, and to an unfortunate degree the effect, is — to express, and, as it were by contagion, to produce and propagate a sentiment of approbation towards the state of things, or the practice, in the designation of which it is employed — a sentiment of disapprobation towards the state of things or practice opposite.

On each occasion on which the word *purity* is employed for the purpose of pointing a sentiment of disapprobation on the act of him by whom a new-coined word is introduced or employed, reference is explicitly or implicitly made to some period or point of time at which the stock of words belonging to that part of the language is regarded as being complete — insomuch that, of any additional word employed, the effect is, to render the aggregate stock — not the more apt, but by so much the less apt, with reference to the ends of language; to wit, not on the score of its individual inaptitude (for that is an altogether different consideration,) but on the mere ground of its being an additional word added to that stock of words which it found already complete — a word introduced at a time subsequent to that at which the language, it is assumed, had arrived at such a degree of perfection, that by any change produced by addition it could not but be deteriorated — rendered less apt than it was with reference to the ends of language.

That as often as conveyed and adopted, any such sentiment of disapprobation is not only ungrounded but groundless, and the effect of it, in so far as it has any, pernicious, seems already to have been, by this description of it, rendered as manifest as it is in the power of words to render it.

An assumption involved in it is, that, so far as regards that part of the language, the perfection of human reason had, at the point of time in question, been already attained. Another assumption that seems likewise involved in it is — either that experience had never, from the beginning of things to the time in question, been the mother of wisdom, or that exactly at that same point of time, her capacity of producing the like offspring had somehow or other been made to cease.

Now as to the causes — the moral, the inward, the secret causes, in which this error — this pernicious mode of thinking, appears to have had its source. Applied to the field of thought and action taken in the aggregate, they appear to be these: — 1. Aversion to depart from accustomed habits; in particular, the habit of regarding the stock of the matter of language as applied to the stock of ideas in question as being complete.

2. Love of ease, or say aversion to labour — aversion to the labour of mind necessary to the forming therein, with the requisite degree of intimacy, an association between the idea in question, new or old, and the new word thus introduced, or proposed to be introduced.

3. Where the word is such as appears to convey with it a promise of being of use, more or less considerable, in that portion of the field into which it is thus proposed to be introduced, a sentiment of envy or jealousy, in relation to the individual, known or unknown, on whose part the endeavour thus to make a valuable addition to the stock of the language has been manifested.

4. Of the causes above mentioned, the application wants not much of being co-extensive with the whole field of human discourse: one cause yet remains, the influence of which will naturally be more powerful than that of all the others put together. This cause is confined in its operation to the field of morals and politics — taking, however, the field of opinion on the subject of religion as included in it.

It consists in the opposition made by every such new word, — in proportion to the tendency which it has to add to the stock of ideas conducive to the greatest happiness of the greatest number, — to the particular and sinister interests of those by whom the sentiment of disapprobation, as towards the supposed effect and tendency of the new word in question, stands expressed, and is endeavoured to be propagated.

§ 4. *Of the modes or sources of improvement of language in respect of Copiousness.*

Of single words, there are not many by which, in various ways, mischief to a greater amount has been done, than has been done by the word *purity*, with its conjugate pure: — done in the field of morals, in the field of legislation, and as here, in the field of taste.

In the fields of morals and legislation, purity has for another of its conjugates, a word significative of the opposite quality, impurity: — to the field of language the application of this negative quality does not appear to have extended itself.

The grand mischief here, is that which has been done by the inference that has been made of the existence of moral impurity from that of physical impurity — of impurity in a

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moral sense, from that of impurity in a physical sense.

In the field of taste, this word has been made the vehicle in and by which the notion is conveyed and endeavoured to be inculcated, that copiousness in language, instead of being a desirable, is an undesirable quality — instead of a merit, a blemish; — purity, being interpreted, is the opposite of copiousness: the less copious the language, the more pure. If ever there were a prejudice, this may assuredly be called one.

In the field of mechanics, when a workman has a new contrivance of any kind upon a pattern of his own to execute, a not uncommon preliminary is the having to contrive and execute accordingly a new tool or set of tools, likewise of his own contrivance, to assist him in the execution of the new work. Such, to no inconsiderable extent, has been the unavoidable task of the author with respect to legal language.*

The following are among the modes in which its improvement in the quality of copiousness may be sought: —

I. Augmentation, not to speak of completion, of the list of conjugates.

Rule 1: From whatsoever root any branch of conjugates already in the language has been derived, — from that branch deduce a root, and from that root deduce every other of the aggregate of the branches of which a complete logical cluster of conjugates is composed.

The operation is analogous to that of the gardener, who, stripping off a twig from a shrub, plants it in the ground, where it takes root, and having so done, forms itself into a perfect shrub, similar to that from which it was stripped off.

Rule 2: Give to every relative appellation its correlative.

Rule 3: Form new words with prefixes and suffixes matching one another.

Rule 4: Whatsoever group of conjugates any one of two opposites has, give also to the other, — to wit, in so far as it remains destitute of them.

II. Augmentation, not to speak of completion, of the list of compound words; — viz. of those in the formation of which the hyphen is employed as an instrument indicative of the junction; for as to compound words in which the junction is formed without the use of this instrument, the list of them will in a great degree coincide with the list of conjugates.

III. Augmentation (here completion is manifestly impossible) of the list of names; — univocal names of things and persons respectively.

In the manufacture of new words the following rules should be observed: —

Rule 1: No new word from any other than an English root, if any such is to be had.

Rule 2: Better from a Latin than a Greek root.

In either case, if there be any one branch already introduced into the English vocabulary, so much the better.

Rule 3: Introduce no species of conjugate of which there is no example as yet in the English language, so long as any one equivalent to it is to be had, of which there is an example in the English language.

When of a species which is familiar, an individual which is not familiar is introduced, for the joint purpose of authority and explanation, at the same time bring to view other individual instances.

§ 5. *English Language — its advantages for the purposes of Legislation.*

Greek, Latin, and Teutonic, are the radical languages of the most civilized nations. Among these languages, the Latin is that which affords the richest set of conjugates, and consequently this language is the most apt for morals and legislation, in which the rule should be — *ideis iisdem, verba eadem.*

Among the Latin-sprung languages, the English is the most apt, as possessing in the highest degree the aggregate of these appropriate qualities, simplicity of texture, ductility, and augmentability.

Its aptitude for the purpose of legislation will appear —

1. As to words singly considered.
2. As to words aggregated into phrases.

It affords facility for the employment of new conjugates upon the pattern of the old. It allows of the employing any substantive as an adjective — viz. by simply prefixing it to another substantive, with relation to which it then becomes an adjective. In this way the names of parliamentary bills are formed. The extent of this facility will be clearly perceived, upon a comparison with the difficulties under which the French language labours in this particular.

It allows also of combining two words into one. When thus united, if one of them be a substantive employed as a substantive, it becomes the representative of an object capable of being made the subject of predication — a fictitious entity, to which, for the purpose of discourse, any action or quality may be ascribed.

It also contains a multitude of affixes — to wit, prefixes and suffixes — capable of being applied to any root for the formation of conjugates.

CHAPTER VIII.

OF THE PERFECTIONS OF WHICH THE LEGISLATIVE STYLE IS SUSCEPTIBLE.

IMPERFECTIONS! What? — nothing but imperfections? And are imperfections all the

* See Appendix, "*Logical Arrangements.*"

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attributes of which nomography is susceptible? is the whole merit of the work of which the legislator in this point of view is susceptible, confined to so negative and weak a merit, as that of the mere avoidance of imperfections?

Perfections? Is there anything in the nature of legislative discourse which renders it unsusceptible of every quality that can with propriety be realized under that name?

Answer 1. Of the positive points of perfection, of which discourse at large is susceptible, there are none that apply to legislative discourse, in respect of its being legislative discourse, — none that apply to it otherwise than in respect of its being discourse.

2. Those points of perfection that apply to legislative discourse, inasmuch as it is discourse, are in point of importance, in comparison with the negative points of perfection, too inconsiderable to bear being mentioned in the same line. To please — to produce in the mind of the reader a sensation of the agreeable kind, but that a momentary one — such is the only desirable object they are capable of being rendered subservient to — the only good effect of which they are capable of being rendered productive.

3. Of those positive points of perfection of which discourse, inasmuch as it is discourse, is susceptible, will some, if not all, in the case of legislative discourse, be produced without any particular endeavour to give birth to them — produced of course by the remedial operations necessary to secure the existence of certain perfections of the negative kind.

Force and harmony: — to these two expressions all the perfections of the positive cast, applicable with propriety to this particular species of discourse, seem reducible. Force and harmony—two endowments, which if they are not the only perfections of which discourse taken at large is susceptible, are at any rate among those of which discourse at large is susceptible — the only ones which, in the case of the particular species of discourse here in question, can be either given to it, or be attempted to be given to it, without rendering it so much the less adapted to its own peculiar purposes.*

Harmony is a perfection which as such ought of course, in so far as may be, to be given to a legislative discourse, as well as to every other discourse. Harmony has for its object and effect, the affording a sensation of the agreeable kind to the ear; and be the organ or the occasion what it may, pleasure, in so far as it is pleasure, is a good, and the production of it a desirable result.

For this perfection, as for any other, a discourse of the kind in question will, when absolutely considered, be so much the better the greater the degree in which the perfection shall have been attained by it; and the advantage thus produced will be pure and clear, if in the form given to the discourse in question in this view, no imperfection of a more important character — none of those which have for their effects ambiguity, obscurity, or overbulkiness, are introduced into it. And in this pure and neat state, proper care being taken, the perfection in question may, it is supposed, be introduced into legislative as well as into any other species of discourse.

As to *force*, in so far as pleasure to the ear of the hearer or reader is the result of this quality in the discourse, this perfection may be considered as no more than a particular modification of the other — viz. harmony.

But besides that though in general harmony would perhaps be found an accompaniment of it, it may happen that the harmoniousness of a portion of discourse may be diminished rather than increased by a structure by which the force of it shall be increased: the service rendered to any species of discourse in general, and to this species in a particular degree, by force, is of a more important kind. This is of the number of those cases in which the effect is to suggest the idea of strength, intellectual strength, on the part of the workman. This idea, on all occasions, in so far as it finds place, an agreeable one, is in the present instance useful on a more important account. In a case of this kind, to excite in the mind of the hearer or reader the idea and opinion of the existence of intellectual strength on the part of the author, is to excite in his mind the idea and opinion of the existence of a quality, than which nothing can be more naturally and surely calculated to inspire confidence.

But among the operations which have for their object and effect the operating as remedies to imperfections of the second order, and thence, in other words, to endow the discourse in a proportionable degree with the opposite negative perfections, there are some which in general have also for their natural effect the giving to the composition the quality of vigour or force.

It is this which prevents ambiguity *ex situ*, ambiguity from bad collocation, by giving in each instance an apt location to every clause the effect of which is to operate in the character of a limitative clause, viz. of that to which it is intended to apply in the character of a principal clause, by inserting it in the bosom of that clause; if it be composed of two or more principal clauses, by placing it at the head of the whole series.†

* 1. Richness in collateral matter brought to view in the way of allusion; 2. Splendour (calculated to operate on the imagination;) 3. Pathos (calculated to operate on the affection.)

† See Chapter V. § 7.

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CHAPTER IX.

OF FORMS OF ENACTMENT.

THE forms of which a law is susceptible are*—1. Integral, or say principal; 2. Fractional, or say modificative—that is to say, modificative of some antecedently enacted principal law: to which may be added a third, under the name of *composite*,† as being composed of one or more integral laws, with the addition of one or more parcels of modificative matter—modificative, with reference to one or more integral or modificative laws.

By an integral law, understand the entire matter of one command—of one sentence or proposition: sentence, in the sense given to the word in an institutional work on grammar; proposition, in the sense given to the word by logicians in a book on logic.

Example: Thou shalt not, or no person shall commit; or, Let no person commit theft.

By a fractional law, understand a law by the matter of which some modification is applied—that is to say, some interpretation or some variation—to the import of the matter of some law, considered as the correspondent integral, or say principal law.

Example: The act of theft is committed, or, theft has place, where, not believing himself to have a right so to do, a person converts to his own use a moveable subject-matter of property, to the use of which, in the manner in which he so converts it to his own use, he has not any sufficient right—he at the same time being conscious of his not having any such sufficient right, and by concealment or carrying off of the thing so dealt with, or by disguise or subtraction of his own person, using his endeavours to avoid being amenable to law in respect of such his act.

In this example may be seen an example of a fractional law, which is interpretative, or say exponing, with reference to the above-mentioned principal, or say integral law.

In consequence of its familiarity to every ear and every eye it is, that the law expressed by the words, Thou shalt not steal, is hereinabove employed as an example; but the form thus exemplified is not the simplest form of which a law relative to this matter is susceptible.

A more simple form is this: Thou shalt not convert to thine own use any moveable thing, or any subject-matter of property, which thou hast not a right so to deal with, as thou hast done. A law expressed in these words belongs to that class of laws which are regularly denominated civil laws, or spoken of as being respectively part and parcel of the aggregate branch of law called the *civil* branch, or the *civil* law, or the mass of matter belonging to the *civil* code. Better, in consideration of the various *other* senses in which the adjective *civil*, when applied in conjunction with the substantive *law* is employed, say, *non-penal* law, or simply *distributive* law.

The law expressed in and by these words,—Thou shalt not steal, or, No person shall steal, is in effect, under the guise of a simple integral law, a composite law, as agreeing with the definition above given of a composite law. For in the import of the word *theft*, as also in that of the word *steal*,—which is an abridged equivalent, of the words commit an act of theft—is included, though tacitly and thus implicitly, the idea of punishment, as being in some shape or other appointed to be inflicted on the agent, who is so in respect of such act:—which appointment cannot be made without a correspondent law (really existing or fictitious, of which latter case presently) enacted for that purpose, and attached to the integral law first mentioned.

Evil consciousness is the name proposed to be employed for the designation of one of two states, in one or other of which unless a man's mind have place, punishment not being capable of producing any good effect—but on the contrary, being sure to be productive of bad effect—cannot but be worse than useless:—the other state thus alluded to being that which in Roman law and language has been termed temerity (*temeritas*), and may in English be rendered by the word *heedlessness;* that is, want of that strength of attention by which, if bestowed, the commission of the act, the maleficent quality of which is assumed, would have been prevented. For the designation of an act here expressed by the terms an act accompanied with evil consciousness, the words, a *malâ fide* act, or an act committed in *mala fides*, are employed in Roman law and language, and

* A law is also susceptible of a categorical, or a hypothetical form. It may be expressed thus:—"Every man who, &c. shall suffer," &c.; or it may be expressed thus:—"If any man, &c. he shall suffer," &c. The distinction expressed by the two terms *categorical* and *hypothetical* has place in reference to propositions in the logic of the understanding: equally has it place in the logic of the will. The categorical is the form employed in enactive propositions in every country except the British Isles, and some, though not all, of its distant dependencies. The hypothetical is a form peculiar to English legislation:—the evil consequences resulting from it are lengthiness, and consequent and proportionate obscurity. On the occasion of each article, in a chain to the length of which there is no limit, scraps of sentences, to none of which there is any conclusion, are strung on, one upon the tail of another, before so much as a single sentence in a complete state makes its appearance. It has for its effect (and when has it failed to have had for its object?) the maximizing the difficulty of comprehending the enactment.

† *Composite*, so termed in allusion to the order termed the composite in architecture.

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thence sometimes in the language employed by English lawyers.

An act accompanied with evil consciousness, as above, is also in Roman law and language said to be accompanied with *dolus;* or say, *dolus* is spoken of as being, in the mind of the agent, an accompaniment of the act. Inadequate, however, is this appellative thus used by Roman and Rome bred lawyers. For *dolus*, in the sense in which it is on any other ocasion employed in Roman language, means deceit, and implies that deception is produced or endeavoured to be produced in the mind of some person on the occasion of the act: — whereas it is as often employed in cases where no such deception is supposed to have been produced or endeavoured to be produced, as in cases in which it is supposed to have been produced,— as in case of a highway robbery or burglary committed by a man who knows that his person is well known to the party on whom and at whose expense the crime is committed.

Laws may further be considered as integral or principal, and subsidiary or say effectuative.

Effectuative being a term of reference,—by an effectuative law understand a law the object and function of which is to give effect to some principal law to which it is appended.

No otherwise than by applying to the mind of a person whose conduct it is designed to influence, an inducement of some kind or other, can any law of the effectuative class be productive of the effect intended.

Such inducement will be constituted by the eventual expectation either of the matter of good in some shape, or of the matter of evil in some shape: — of the matter of good in case of compliance, or of the matter of evil in case of compliance; or of the matter of good in case of non-compliance, and the matter of evil in case of non-compliance, in which case, in any event, the one or other will, by the person whose active faculty it is endeavoured thus to influence, be receivable.

If it be of the matter of good that the expectation is thus held out, *remunerative* is the term by which the effectuative law in question may be designated: — if the matter of evil, *penal*, *punitional*, or say *punitive*.

Legislation has been distinguished into two modes — the direct and the indirect.

In the *direct* mode, the persons at whose hands obedience is desired, are different in the case of the subsidiary or effectuative law, and in the case of the fractional law. In the case of each of the two species, the remunerative and the punitive, they are, howsoever it may be in regard to the principal law, always the same.

1. In the case of the *remunerative* subsidiary law, — the persons, whosoever they happen to be, by whose hands the matter of remuneration is eventually to be transferred into those in whose instance compliance with the desire which gave birth to the principal law has had place, are most commonly, persons belonging to the financial subdepartment of the administration department.

2. In the case of the punitive subsidiary law, — the judge to whom the cognizance of the case belongs.

3. In the case of the principal law, they are persons of any class whatsoever, — persons belonging to any one of the classes all-comprehensive, or short of all-comprehensive,—at whose hands compliance is called for by the general code, and the several particular, or say specific codes,—including the several still more particular, and, as they may be termed, subspecific classes, at whose hands compliance is called for in and by each one of the several particular codes.

In the indirect mode of legislation, separate subsidiary, or say effectuative law, for this particular purpose there is none.

Disguised forms of legislation may be employed, either undesignedly or designedly: — thus by means of a remunerative inducement, there may be created an indirect mandate — under the appearance of a prohibition, there may be an indirect licence.

Indirect mandate, with a remunerative inducement to compliance.

Example: Mass of the matter of wealth to an indefinite amount. Power given to P. (patron) to confer it; — to I. (incumbent) to receive it, retain it, enjoy it: — but on condition precedent, antecedently to be performed; to wit, a declaration of opinions, a declaration by the utterance of which the declarant asserts that he entertains, in relation to a certain subject-matter of opinion thereupon named, an opinion to a certain effect.

Of the utterance of every such mandate, the *effect* is the production of mendacity on the part of some part, or the whole of the number of those by whom the mass in question is received. How so? Answer: Because, in this case, by a man in whose instance the assertion is mendacious, accompanied with evil consciousness, the matter of good in question, the reward, may be obtained as surely and as safely as by any one in whose instance the assertion stands clear of any such accompaniment.

In the instance of no person can any other person have sufficient ground for regarding it as certain that a declaration of opinion made in the case in question is mendacious. But in the instance of any person, all others will have some ground for entertaining a suspicion to that effect; — that is to say, for regarding such mendacity as being more or less profitable.

The probability of the existence of mendacity in this case, is in the direct ratio of the

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improbability of the matter of fact, the existence of which is asserted by the declaration in question; and of the perspicacity of the person by whom the declaration is made.

For contributing to the propagation of mendacity on this occasion, in this mode, and by this means, inducements operating on the part of a contributor are the following:—

1. Averting from himself the imputation of mendacity. The persons in whose instance alone this inducement has place, are those by whom the like declaration is known to have been made.

2. Producing on the part of other persons in an indefinite number, a declaration of opinion clear of the imputation of mendacity on the subject in question,—that is, in other words, causing them really to entertain an opinion to the effect in question. How so? Answer: By the force of authority-begotten prejudice.

In relation to many points, not to say most, every man finds himself under the necessity of borrowing his opinions from others, grounding his conduct not on any direct opinions of his own relative to the matters of fact in question, but upon the opinions of this or that person, or class or assemblage of persons, whose opportunities of receiving information he regards as more conducive to the end in view, than any of which he himself is in possession.

In this way it is, that by a declaration of opinion made by a man in whose instance it is mendacious, that same opinion is caused to be really entertained, and consequently a declaration made of it clear of mendacity in the instance of other persons in any number.

3. By this means giving strength to the party to which he belongs—a party having for the symbol and evidence of mutual union and co-operation, the entertaining of the same opinion in relation to this or that subject-matter of opinion, no matter what.

Licence presupposes either prohibition or mandate, and has for its effect the removal of the one or the other, in the instance and for the benefit of the individual who is said to be licensed.

In the case of prohibition, the indirect mode is much more effective than the direct. Why? Because prohibition supposes delinquency on the part of him who fails to comply with it; that is to say, who exercises an act of the sort of those for the prevention of which the prohibition issued: prohibition supposes delinquency, and delinquency supposes eventual punishment and suit at law, in this case styled prosecution, for the purpose of inducing the judge to apply the punishment. But for this purpose, evidence is necessary, with time and means of adducing counter-evidence; none of which obstacles have place in the case of indirect prohibition.

The greater the delay, expense, and vexation attendant on prosecution, the greater the excess of efficacy on the part of the indirect in comparison with the direct mode.

In a word, the mode of prohibition is indirect when the portion of good or the portion of evil of which the inducement to abstain from the exercise of the prohibited act is composed, takes place without recourse had by any person to the services of the judge for the purpose of causing it to be received: the portion of good, that is to say, the enjoyment, or the efficient cause of enjoyment—the portion of evil, that is to say, the portion of suffering, or the efficient cause of suffering.

Prohibition, with a punitive inducement to compliance attached in the indirect mode.

Example: A tax imposed on law proceedings—the amount of it payable either to the public, or to a judge, or other member of the judiciary establishment.

Every tax imposed on an object of general desire has the effect of a prohibition; that is to say, a prohibition inhibiting the use of it to all those who have not wherewithal to pay the tax. Now mind the effect of a tax imposed on the faculty of obtaining the services of the judge.

The use of it to those to whom it is of use—the use of it in comparison with the direct mode of endeavouring to prevent that which it is desired to prevent, is the faculty of effecting the prevention without the odium which would attach upon any one who should be seen to join in the application of prohibition in the direct mode.

By a tax on law proceedings, the effect of a licence may be produced.

I. A tax imposed on the operations performed on the plaintiff's, or say demandant's side, operates as a licence to wrong in every possible shape, at the charge of every individual who, at the time in question, is unable to defray this factitious expense, in addition to expense in all other shapes, factitious and natural taken together: in this case, to wrong in all shapes through failure of justice, for want of the official services of the judge and his subordinates.

The efficient enactments by which in this case the effect, *i. e.* the licence, is produced, are these:—1. A mandate addressed to the judge, commanding him eventually to render to each demandant the particular services demanded by the demand, and thereby to impose on the defendant the burthen, whatever it be, the imposition of which is called for by the demand,—eventually, that is to say, if to the satisfaction of the judge it shall have been proved, that by rendering such service, execution and effect will on that individual occasion have been given to some law applying to the case. 2. Applicable to a correspondent portion of the extent covered by that same

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mandatory enactment, a prohibitory enactment, inhibiting the judge from rendering such a service in every individual case in which the tax in question has not been paid.

II. A tax on judicial operations performed and judicial instruments employed on the defendant's side, operates not only as a simple licence given to the demandant to inflict wrong on the defendant in every shape in which punishment or other burthen is endeavoured to be imposed by the demand: in this case, not merely is a licence to commit the several enormities given, but by the legislator, at any rate, the judge is rendered an instrument in the hand of the wrongful demandant, in and for the commission of all these several wrongs —an accomplice of the wrongdoer, the wrongful demandant, by whom is reaped the chief profit from these wrongs.

The effective enactments by which in this case the effect of the licence, or more than the effect of the licence, is produced, are—

1. A mandate addressed to the judge, commanding him *eventually* to render to each demandant the services demanded by his demand, and thereby to impose on the defendant the burthen, whatever it be, the imposition of which is called for by the demand:—eventually, that is to say, if to the satisfaction of the judge it shall have been proved, that by rendering such service, execution and effect, will in this indivdual occasion have been given to some legislative-made law at that time in force and applying to the case, or some judge-made law, operating in default of such legislative-made law, and applying to that same case.

2. A correspondent prohibition addressed to the judge, inhibiting him from permitting the defendant to perform this or that operation, the performance of which is necessary,—or from exhibiting this or that written instrument,—exhibition of which is necessary, to his *defence:* that is to say, to the affording to the judge reasonable ground for being satisfied, that in case of his rendering to the demandant in question the service he demands, execution and effect would not be rendered to any law, but that, on the contrary, by his rendering that same service an offence against some law actually in force would be committed.

Of these two arrangements taken together, the effect is, to command the judge, on the individual occasion in question, to commit an act which in the eyes of the legislator himself is an act of injustice: to bestow upon every person by whom what in his eyes is regarded as an adequate assurance has been obtained, that another individual, on whom he is desirous of imposing a burthen in any shape in which the judge is either commanded or permitted eventually to impose it, that such individual will not be able to raise the money on the payment of which, and not otherwise, he will have purchased the permission to adduce the evidence, and arguments necessary to exempt and preserve him from suffering under the burthen thus wrongfully endeavoured to be imposed,—the effectual power of imposing that same burthen.

When by a law by which, for the declared purpose of preventing the exercise of a species of act regarded as being in a preponderant degree maleficent, a prohibition with a punitive sanction, or say inducement, is established, in such sort, that—while the aggregate amount of the eventual burthen appointed to be borne by a person not complying with the inhibition is fixed, or confined on the side of increase within a certain limit, the nature of the inhibited act is such, that in individual cases more or less numerous, after the offending agent has been subjected to the burthen, a clear benefit, or say a *net profit*, to an amount more or less considerable, remains in his hands, — instead of the supposed and apparent prohibitory enactment or arrangement, a mandatory enactment and arrangement, with a remuneratory sanction and inducement, has place, to the amount of such clear benefit in each such individual case.

From this theoretical observation follows a practical conclusion of prime importance. Throughout the whole penal code, in the case of every offence, give to the judge the power of searching out and taking from the offender the whole profit of the offence: — this done, and not before that, it comes to be of the nature of any burthen imposed, to contribute in the character of a subsequentially privative remedy to the prevention of offences of the like nature in future.

To the present topic belong in strictness those cases, and those cases alone, in which, at the expense of prohibitive enactments with punitive inducements emanating from the legislative authority, an unannounced, and thence by persons in general unperceived, licence, is granted by that same authority.

But a place may here be found, in which, in the way of allusion, intimation may be given of a species of operation productive of the same effect though performed by other hands; since of the mass of evil thus produced, the intensity and extent are such as can scarcely fail to impress upon every reader's mind a correspondent sense of its importance.

These other hands are those of the judicial authority: and in the circumstances in which civilized society has everywhere as yet been placed, though in point of fact everywhere the judicial authority is by avowed acknowledgment subordinate to the legislative, and in the very nature of the case cannot but so be,—yet such, on the one hand, has been the cunning and audacity of the members of

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the judicial establishment, and such the blindness or supineness of the legislative authority, in whatsoever hands placed, that in every country, to a greater or less degree, but in England in a more particular degree and to a greater extent by far than in any other country, the judicial has found means, on various pretexts, to trench upon the authority of the legislative, to destroy the effect of its enactments, and thus, and in so far, usurp its authority.

In another place, the device by which this state of things has been brought about has been designated by the words, *decision on grounds avowedly foreign to the merits:** and under this, the practice, or say operation, designated by the appellative of nullification or annulment, has been brought to view, and shown to be the principal instrument of the evil thus accomplished.

It has been seen how it is, that of the principal enactment, whether prohibitory or mandatory, with a punitive inducement, the effect depends upon a corresponding enactment, styled a subsidiary, or say effectuative enactment, commonly, if not always, of the mandatory cast, addressed to the judge. Hence it is, that if in any instance, upon application in ordinary course made to him, the conduct maintained on that individual occasion be, instead of strict compliance as it ought to be, that of downright non-compliance, such act of non-compliance is an act of usurpation, an act of delinquency, in respect of which in every political community in which a degree of anarchy incompatible with general security is not preferred to a consistent mode of governance, without which no adequate degree of general security can have place, every judge thus acting in a state of disobedience to his universally acknowledged superordinate, will be considered as a criminal, and as such dealt with.

In this case, not only does the judge in every instance assume to himself, and exercise the power of frustrating, and *pro tanto* repealing the enactment of the legislature, but though in an indirect, not in a less efficacious way, with or without being conscious of the evil he is doing, does he impart that same power to other persons in a great variety of situations. For non-compliance with a certain supposed and imaginary enactment, although the act of delinquency of which he stands accused have been proved upon the defendant, and thereby the existence of the corresponding obligation on the part of the judge to make application of the appointed punishment, the judge refuses to make such application.

Now, then, if it were real, this imaginary regulation, what would it be? It would be for example, a regulation enacting that unless in the instrument of accusation (denominated for example an indictment, by which, in so far as regards general ideas, expression is given by a certain assemblage of general words, while for the giving expressions to the individual ideas belonging to the individual case blanks are left), such and such words shall be employed: — employed by whom? by the individual, whoever it is, by whom the words were written, subject to a review performed or not performed, as it may happen, by his employer, a person holding some subordinate situation under the judge, — the punishment enacted by the legislator shall not be inflicted.

Hence, then, by this regulation, a power is given at any rate to some subordinate functionary in an obscure situation, to frustrate any or all enactments of the legislator which come for execution and effect to the judge under whose authority he officiates; — at any rate, to some subordinate clerk of the arraigns or whatever he is called. But in contingency, and always in probability, another person to whom this same power is imparted, is any man whatsoever, who, in the capacity of a copying clerk, happens to be employed by that same subordinate officer.

Of this same maleficence-licence institution, the species of licence here and elsewhere mentioned under the name of the *mendacity licence*, is a species, or say modification.

In this case, a prohibition is enacted — a prohibition with a punitive sanction and inducement, inhibiting under certain penalties the commission of any act of mendacity — of any act by which expression is given to a false assertion, accompanied with the consciousness of its falsity. But the case to which the application of this prohibition is confined, is the case in which a special engagement to abstain from mendacity has been taken and entered into, by bearing a part in the ceremony styled an oath, — in this case, an *affirmative oath*.

Thus stands the matter in the case of the mendacity-licence taken at large.

But in the case of the mendacity-licence which has been established, and has place on different occasions throughout the whole course of judicial procedure under the law of England, as also under the law of perhaps most other countries, — to this negative sort of encouragement given, and licence granted, by forbearance to apply prohibition, is added, under English law at any rate, an encouragement of the positive cast, afforded by a mandate with a sanction and inducement of the remunerative kind, addressed to all *malâ fide* suitors on both sides of the suit, and in particular at the outset to a *malâ fide* suitor on the demandant's side.

Utter — says the legislator to every man disposed to be a wrong-doer, to commit depredation or simple oppression at the charge of any individual marked out by him for his

* *Petition for Justice.* See Vol. V. p. 476.

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victim — utter in customary form and quantity a mass of mendacious assertion; — if the individual at whose charge it is your desire to inflict wrong in this shape, whatsoever it be, have after a certain length of time failed to give utterance in a written form to a correspondent mass of assertory matter, true or false, the wrong it is your desire to commit at his charge shall take effect; the mass of the matter of wealth, whatever it be, which being in his possession it is your wish to get into yours, shall accordingly, upon your carrying on the appropriate series of operations, be placed in your hands, or the oppression which in other shapes it may be your wish to see exercised on him, shall accordingly be exercised.

Thus pregnant with absurdity and mischief upon an all-comprehensive scale, would be this practice—this institution (if such it may be called), if the facts assumed by it really had place; namely, the existence of a standard of conformity set up by competent authority, and warning given of the practical consequence that would be grounded on want of conformity to such standard — namely, the frustration, and *pro tanto* the repeal of the punitive, subsidiary, or say effectuative law, attached by the legislative authority to the principal prohibitive law. So much for what in a certain supposed case would have been the state of things. But this same state of things, what is it in reality? Answer: Throughout the whole of the portion of the field of law over which this licence extends its baleful influence, the existence of any such standard, and consequently of the warning pointing to it, is a mere fiction. It is for not having done that which to the knowledge of these judges was impossible, — the impossibility being of their own creation, that the suffering inflicted by the frustration of the legislative-made law is inflicted by them.

Suffering thus inflicted by a judge, and that without so much as a pretence of maleficence or delinquency in any shape, — on his part in any shape?

Oh yes, so it is. For whatsoever may have been the expense, not to speak of vexation in other shapes, experienced by the prosecutor in the course of his endeavours to cause execution and effect to be given to the enactment of the legislature, the suffering produced by it is left to rest on his shoulders without compensation; while, by the delinquent, be his maleficence ever so enormous, in no shape (in addition to the vexation) is suffering produced, other than by such expense as he is subjected to by the proceedings carried on by him on the occasion and for the purpose of his defence.

By the legislator orders are given to the judge to inflict punishment on the delinquent. This same judge, — what does he in consequence? In so far as depends upon him, the criminal he leaves unpunished, securing to him at the sametime whatsoever was the expected profit of his crime — the goods, for example, abstracted in the way of theft, highway robbery, or housebreaking: on the party in whose breast the suffering was produced by the crime — in spite of the legislator, in the very teeth of his ordinance — he heaps additional suffering.

Of insubordination thus exemplified, too much there is in the legal system of every civilized country on the face of the globe; into the mass of power belonging to the master legislator, to which, as in duty bound, he gives execution and effect, this cunning servant contriving everywhere to slip in a portion of power clandestinely, to add to his own use a portion of power, to which he gives most sure execution and effect, to his own use and to his own advantage, at the expense of the power of the sovereign and the comfort of the subject-citizens. After the pattern set by Rome-bred law, *à peine de nullité*, you see in Buonaparte's codes: — the like in the same language, or some other language, you may see in other codes. And the punishment thus inflicted by the utterance of the word *nullité*, or its equivalent, on whom is it inflicted? On the guilty author of the injury? No, not in any instance: but on him who, in respect of the injury, is not only innocent, but injured. Of the suffering produced in the case of the most mischievous crime, committed by a man who in common language is aggregated to the all-comprehensive and reproachful denomination of malefactors, what is the quantity compared with that produced by the judge with the word nullity, or this or that one of its kindred for a pretence?

Thus stands the matter hitherto, even in that code of that government, the practice of which, in this respect, is least exposed to reprobation. But it is in England and English law that injustice in this shape triumphs and reigns, with a degree of flagrancy which leaves the highest of that exemplified in any other country far behind.

A sportsman who, with or without a crown or a judge's wig upon his head, taking his station within shot of the entrance of a bridge, should amuse himself in shooting men and women instead of partridges and hares, might serve as the emblem of the judge with the words null and void, instead of shot; laying low at the command of his caprice the passengers as they presented themselves, aiming at them without any other care as to the selection, than that of bringing down the party robbed or hurt, instead of the malefactor by whom the robbery or the outrage had been committed.

Another exemplification of unauthorized legislation has elsewhere been brought to

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view; to wit, that practised by individuals in the situation of jurymen.* Throughout English law, if, on the part of any class of public functionaries, misconduct in any shape receives a palliation, it is by misconduct on the part of the same or some other class of public functionaries. Thus the *veto* put as above in individual cases by judges on all laws, the most salutary and indispensable, receives a sort of palliative, and the mischief of it a sort of counteraction and correction, in the *veto*, which also, in individual cases, juries have the power of putting upon mischievous ones. Weak, indeed, would be the palliative, scanty the compensation, were the mischief, which an English juryman by his *veto* has it in his power to prevent, no greater than that which an English judge, with the words null and void in his mouth, has it in his power to propagate.

But the utmost mischief which the judge is likely to add to the will, the power to do, on any individual occasion, does not go beyond that which is the result of letting loose upon society a murderer or two: as when, not long ago, the man who had cut a child's head off, was saved by a judge from punishment, because some clerk or other had written in a paper a line or a word which the judge said was a wrong one. Whereas nothing can be more clear, that were it not for the power which juries possess of nullifying, amongst other portions of judge-made law, that by which all free discussion of the conduct of public functionaries is constituted a crime, and as such declared to be and endeavoured to be made punishable, the condition of the people of England would long ago have been rendered undistinguishable from that of the people of Spain and Portugal.

Instead of the child as above, suppose the person to whom the amputated head had belonged a king—and suppose, as would be the case, the name given to the crime to be, — not murder, as in that case, — but treason. As to the judge, there would be no great apprehension of his granting in this case the licence granted as in that case, to the crime. Not altogether so in the case of the juror: to him it might seem that the people would be better off without the king in question in particular, or without any king whatsoever, than with one; and in that persuasion, pronouncing the words *not guilty*, he might by perseverance force into the eleven other mouths those same words, with the perjury which English piety has added as if for a relish. And thus it is, that when the corruption of the English government has swelled to such a pitch as to render the whole amount of it a no longer endurable nuisance, a few jurors, with these two words on their lips, have it at their option to accomplish the dissolution of it; whereupon sooner or later a new government in some shape or other will take place, and be established: and as to any other equally bad with the present, it is what the most timid need not be apprehensive of; seeing that it is not in virtue of the form of government, but in spite of the form of government, that that measure of felicity, whatever it be, by which England stands distinguished to its advantage from any other nation, is produced.

In effect, the power thus exercised as above by judges, jurymen, and attorneys' clerks, has it not a name? Oh yes; — a name it has; — and that name is *pardon*. Everywhere, on the footing on which it stands at present, the power thus denominated is a relic of primeval barbarism: it is the power of frustrating the declared will of the legislator. The folly on which it stands in a monarchy styled limited, is different from that on which it stands in an avowedly absolute monarchy. In an absolute monarchy, in which it is in the single person of the monarch that the whole power of legislation is vested, neither in the possession nor in the exercise of the power of pardoning has contradiction in any shape or degree place: in the individual occasion in question — in the individual instance in question, the will of the sovereign is different from that which has place in all cases without distinction. To take away the effect of the law in every future individual instance without exception, is altogether at all times in his power, and frequently in his practice: and in comparison with this, how small is the power of pardoning an individual, supposing the occasion on which it is exercised ever so improper, and the effect of it ever so mischievous?

Very different is the folly on which the case stands, when the monarch, having no more than a share in the exercise of the legislative power, so called, has in his own single hand the power of frustrating the effect of any enactment, howsoever salutary, howsoever necessary to public security.

How much greater the folly for any legislature to leave the power of frustrating its enactments in the hands of jurors, judges, and copying clerks.

* See *Principles of Procedure*, Vol. II. Ch. XXIII.; *and Elements of the Art of Packing*, Vol. V.

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APPENDIX.

LOGICAL ARRANGEMENTS,

OR

INSTRUMENTS OF INVENTION AND DISCOVERY

EMPLOYED BY

JEREMY BENTHAM.

LOGICAL arrangements, which have served as so many *nova organa*, or instruments of invention or discovery to Jeremy Bentham, in the composition of his several works.

To enable himself to take a commanding view (says Bolingbroke) of the field of law and legislation, there are two principal vantage grounds, on which it is necessary for a man to mount, viz. *history* and *metaphysics*.

The observation is Lord Bolingbroke's, and it has been quoted from him by Hume, or some other author of the first eminence.

To that one of the two vantage grounds which is offered by history, the road is smooth and flowery; — and of those who have ascended to it, and taken post upon it, there has been no want.

To that which belongs to the region of metaphysics, the road is rugged, and full of thorns. Few are they who have attempted to gain this height; and of those few, still fewer who have succeeded in reaching it, and placing themselves in any such station as hath afforded them any clear and extensive view of the regions stretched out at their feet.

In the following sketch, an enumeration is given of the several monticules which, in the course of his travels on the vantage ground of metaphysics — to call it by the name given to it by Bolingbroke — or, as some would say, of logic — were descried by the mind of the author, and on which, from time to time, it has taken its station, for the purpose of the surveys it has, for different purposes, had occasion to take of that extensive field which is occupied below, in common by ethics or morals, law, and legislation.

If their position merely be regarded — the post they occupy in the intellectual regions —these objects may, according to the figure of speech employed by Bolingbroke, be considered merely as so many stations or resting-places in that more arduous one of his two vantage grounds.

If the purposes and uses to which they have been applied be the object of regard, there will be a convenience in changing the figure, and considering them, with Lord Bacon, as so many engines or instruments, by the aid of which the different works that have been undertaken have been either accomplished, or at least laboured at and attempted

In most instances, the instrument thus employed by the author was constructed by himself alone, — no part having been borrowed from any other hand; — in other instances, the instrument was found by him, in part at least, ready made; but either enlarged by himself, or applied to uses to which it had not been observed by him to have been applied by any one else. As often as the hand from which he thus received it could be de-

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termined and recollected, mention has been made of it.

New ideas derived from Logic.

I. Division of entities into real and fictitious; or say, division of nouns-substantive into names of real entities, and names of fictitious entities: —

By the division and distinction thus brought to view, great is the light thrown upon the whole field of logic, and thereby over the whole field of art and science, more especially the psychical, and thence the ethical or moral branch of science.

It is for want of a clear conception of this distinction that many an empty name is considered as the representative of a correspondent reality: — in a word, that mere *fictions* are in abundance regarded as *realities*.

D'Alembert is the author in whose works* the notion of this distinction was first observed by me; — *être fictif* is the expression employed by him for the designation of the sort of object, for the designation of which the appellation *fictitious entity* has ever since been employed.

In speaking of the faculties of the mind, the same distinction will also be found occasionally brought to view in the philosophical works of Voltaire.

By attention to this distinction it is, that I was enabled to discover and bring to view, in the case of a numerous class of words, their incapacity of being expounded by a definition in the ordinary form, viz. the form *per genus et differentiam*, which form of definition it has, with how little success and benefit soever hitherto, perhaps universally been the practice to bestow upon them; and at the same time to bring to view the only instructive and useful exposition of which the words of this class are susceptible, viz. the exposition by *paraphrasis* — the only form of exposition by which the import attached to them is capable of being fixed, and at the same time placed in a clear and determinate point of view.

See, in particular, the class of political, including legal, fictitious entities,† in respect to which, by indication of the relation which the import of the word in question bears in common to the fundamental ideas of pain and pleasure, a distinct and fixed meaning is thus given to a numerous tribe of words, of which, till that time, the meaning had been floating in the clouds, and blown about by every blast of doctrine: — words to the which, in the mind of many a writer, no assignable ideas, no fixed, no real import, had been annexed.

II. Division of entities, real and fictitious together, into physical and psychical: —

By means of this arrangement, considerable has been the light thrown upon the field of psychical entities, and the origin and formation of language: the connexion between the nomenclature of psychical and that of physical entities has been clearly pointed out. There is no name of a psychical entity, which is not also the name of a physical entity, in which capacity alone it must have continued to have been employed, long before it was transferred to the field of psychical entities, and made to serve in the character of a name of a psychical, and that most commonly a fictitious entity.

III. Relations between the import of the word *happiness*, and that of the words *pleasure* and *pain*: —

Sole positive element of happiness, alias *felicity*, alias *well-being*—pleasures, and those determinate ones: sole negative element of happiness, exemption from pains, and those equally determinate ones.

Determinate import thereby given to the word *utility*, a word necessarily employed for conciseness sake, in lieu of a phrase more or less protracted, in which the presence of pleasures and the absence of pains would be brought to view.

An action may be considered and spoken of as *useful*, as conducive to general utility, in proportion to the *value* of any pleasures which it is its tendency to produce, or of any pains which it is its tendency to avert.

Whether there ever were a time at which the word happiness failed of presenting to my mind the character of an aggregate, or compound, of which pleasures, and the exemption from corresponding pains, were the sole elements, is more than at present I can recollect. The satisfaction I remember to have experienced at the observation of this interpretation, as given to it in the first place by Helvetius,‡ and afterward by Hartley,‖ affords some presumption of its being at the first of these times new to me. But perhaps the cause of that satisfaction was not the novelty of the notion in relation to my own conceptions, but the circumstance of seeing the confirmation given to them in these works.

IV. Elements or dimensions of value in regard to pleasures and pains. —

It was from Beccaria's little treatise on crimes and punishments that I drew, as I well remember, the first hint of this principle, by which the precision and clearness and incontestableness of mathematical calculation are introduced for the first time into the field of morals — a field to which in its own nature they are applicable with a propriety no less incontestable, and when once brought

* Melanges de Literature et de Philosophie.

† Obligation—right—power—privilege, &c.

‡ In his book De L'Esprit.

‖ In his Treatise on Man, or rather the Abridgment of it.

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to view, manifest, than that of physics, including its most elevated quarter, the field of mathematics.

The elements or dimensions of value, in regard to pleasures and pains, are — 1. Intensity; 2. Duration: these belong to it whether considered as past or as future; and of these two taken together, its magnitude is composed. To these come to be added, but in the case only in which it is considered as not yet past — 3. The certainty or probability of its arrival; 4. Its proximity, propinquity, or remoteness.

Thus far it is considered as confined to the breast of a single individual: if considered as seated, or capable of being seated, in a number of different breasts, it is then considered as existing under a fifth dimension, viz. Extent, — which extent has for its measure the number of the individuals who are considered as being thus affected; — the greater that number, the more extensive it is; the less, the less extensive.

Two other conceivable elements of value remain still to be ascribed to it, viz. 6. Fecundity; 7. Purity. Of these elements, neither, it is true, can be considered as belonging to the value of a pleasure or a pain when considered by itself: in both instances, it is considered inasmuch as it is capable of being accompanied or followed by sensations of the same or a different kind. If by sensations of the same kind, *i. e.* if, being a pain, by a pain — or being a pleasure, by a pleasure, it be considered as accompanied or followed, it may, in proportion to the number of such concomitant or consequent sensations, be termed *fruitful* or *unfruitful*, prolific or unprolific: — if by sensations of an opposite kind, it may, in proportion to the number of such concomitant or consequent sensations, be termed *impure*, in proportion to the number of those which it escapes or fails being accompanied with, *pure*.

For bringing to view in a concise form these elements, seven in number, the following memoriter verses, awkward as verses of that class naturally are, may for the present serve: —

Intense, long, sure, not distant, fruitful, pure,
Such marks in pleasures and in pains endure.
Such pleasures seek, if *private* be thy end;
If it be *public*, wide let them *extend*.
Such *pains* avoid, whichever be thy view;
If pains *must* come, let them *extend* to few.*

Less awkward verses I cannot but suppose may one day be found, and substituted to these with advantage, by some person who is more in use to dress up language in the garb of poetry.

* For a full explanation of these elements or dimensions, see *Introduction to Morals and Legislation*, Vol. I. p. 15. Chap. IV., *Value of a lot of pleasure or pain, how to be measured.*

V. Extension of the use made of the word *matter*, from the field of physics to the whole field of *psychics*, or *psychology*, including *ethics* and *politics*: —

1. In the higher, or more general quarter of them; viz. in the phrases *matter of good*, *matter of evil*.

2. In the department of *law* in general, and of *penal* law in particular, — *matter of satisfaction* or *compensation*, *matter of punishment*, *matter of reward*; matter of punishment being neither more nor less than the matter of evil applied to a particular purpose; — matter of reward, the matter of *good* applied to *one* particular purpose; — matter of satisfaction, the matter of good applied to *another* particular purpose.

3. In political economy — matter of wealth and its modifications; viz. the matter of *subsistence*, and the matter of *opulence* or *abundance*; each of these being neither more nor less than so many modifications of the matter of *wealth*; and in so far as, through the medium of exchange, interconvertibility as between them has place, with no other difference than what corresponds to the difference in the purposes to which that common matter comes to be applied.

Correctness, completeness, and consistency of the views taken of these large portions of the field of thought and action, — conciseness in the sketches made or to be made of them: — such are the desirable effects which this locution presented itself as capable of contributing in large proportion to the production of.

By this means, for the first time, were brought to view several analogies, which have been found of great use in practice; — a clearer, as well as a more comprehensive view of all these objects, having thereby been given, than in the nature of the case could, or can have been given by any other means.

The matter of *good*, as to one-half of it — one of the two modifications of which it is composed—viz. the negative—being the same thing as the matter of *evil*; one and the same object—viz. pain—having by its presence the effect of evil, by its absence or removal the effect of good; — the matter of good being, in its positive modification, composed of pleasures, and their respective causes — in its negative modification, or form of exemptions, *i. e.* exemptions from pain, and their respective causes.

In like manner, the matter of *evil* being as to one-half of it — as to one of the two portions of which it is composed, viz. the negative — the same thing as the matter of good; one and the same object — viz. pleasure — having by its presence the effect of good, by its *absence*, when considered as the result of loss, the effect of *evil*: the matter of evil being, in its positive form, composed of pains, and

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their respective causes — in its negative form, of losses corresponding to the different species of pleasures capable of being acquired and possessed, or lost, and their respective causes.

From this correspondency and interconvertibility, a practical result — in the hands of whosoever is able and willing to turn the observation to advantage — is the prevention of excess and waste in the application of both these portions.

A position which by this means is placed in the clearest and strongest point of view, is — that by whatsoever is done in any shape, in and by the exercise of the powers of government, is so much certain evil done, that good may come.

Though the matter of reward, and the matter of satisfaction (viz. for injuries sustained) are in themselves so much of the matter of good, yet it is only by coercion, and that in a quantity proportioned to the extent to which that coercion is applied, that the matter of good thus applied can be extracted.

That when, on the score of and in compensation for injury sustained, the matter of good is, in the character of matter of satisfaction, extracted from the author of the injury, it operates, in and by the whole amount of it, in the character of punishment, on the person from whom it is extracted: and whatsoever may be the quantity of punishment inflicted in this shape, in that same proportion is the demand for punishment satisfied; and whatsoever may be the amount of it in this shape, by so much less is the demand, if any, that remains for it in any other.

Operating in any such way as to produce, on the part of the party operated upon, an act or course of conduct adverse in any way upon the whole to the interest of the community in question — *ex gr.* a particular class or district or other division of the political state, the whole of the political state in question, or mankind at large — the matter of good and evil becomes the matter of corruption.

It may be either the matter of *good* or the matter of *evil:* but it is the matter of good that most frequently presents itself in that character.

The breast in which the matter of corruption is thus operating may be that of any individual at large; but the case which affords the most frequent occasion for speaking of the matter of good, as operating in this character, is that in which the person thus operated upon is regarded as occupying the situation of a trustee — of a trustee, whatsoever be the party regarded, as the correspondent principal, or, as the English lawyers say, using remnants of an obsolete jargon borrowed from France, *cestuy que trust;* whether another individual, or assemblage of determinate individuals, a subordinate community, composed of an assemblage of individuals, individually indeterminate, or the whole political state.

To operate in the character of matter of corruption, the matter of good and evil requires not to be actually applied by this or that hand in the character of a *corrupting hand.* Of itself, and without any such application, the matter of good and evil, especially in the form of *good*, keeps operating, in so far as, being at the disposal of any individual, or assemblage or division of individuals, the interest of such parties is adverse to the interest of a greater number of individuals.

In every political state, in the shape of the matter of wealth, a quantity, more or less considerable, of the matter of good and evil lies, and a still greater quantity is expected to be at the disposal of the several persons in whose hands the business of the administrative department is lodged. In every state, in so far as in these same hands the disposal of it is left free, it is in the power of these trustees of the public so to dispose of it in favour of other trustees of the public in the other departments of government — viz. the legislative and the judicial — as well as to those belonging to that same department, the administrative — as to cause them to be subservient to the particular interest of these depositaries of the public stock, at the expense of the public at large.

Accordingly, in proportion to the quantity of this matter being or expected to be at the disposal of these hands, and the facility with which it is capable of being applied to this sinister purpose, will be the force with which, in the character of the matter of corruption, the matter of good and evil will be operating — operating upon all persons, according to the degree in which, partly by situation, partly by disposition, they stand exposed to its sinister influence.

VI. Good and evil of the first, second, and third orders, *i. e.* Effects similar or opposite, producible in society by the operation of one and the same act at different stages of its progress: — effects in some cases homogeneous with reference to each other, in other cases heterogeneous, are produced in the way of good and evil by the influence of one and the same act in the course of its progress in and through society.

1. In the case of delinquency, — effects in the way of good and evil producible by an offence.

In the first stage comes a portion of the matter of good; viz. the advantage, whether in the shape of pleasure or of exemption from pain, the prospect of which was, in the character of a motive or inducement, the cause of the commission of the pernicious act.

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At the next stage comes, in some cases, an effect of an opposite nature — a portion of the matter of evil; viz. if the pernicious act be of the number of those by which a determinate suffering is produced in the breast of an assignable individual or individuals; — here we have one portion of the matter of evil — call this portion *the evil of the first order*.

An ulterior, and in every respect perfectly distinct lot of evil, produced in some cases from the same cause, has been termed *the evil of the second order*. It consists partly of the alarm produced in other breasts by the apprehension of finding themselves among the sufferers from other pernicious acts, that appear likely to be produced by the individual offence in question, in the event of its having been found in its issue favourable to the offender.

Of the mass of evil capable of being produced by an act of delinquency, or at any rate by a multitude of acts of delinquency of the same nature, that portion which comes in at the third and last stage of its progress, is of a sort which, under any tolerably well-established government, is rarely, to any considerable extent, exemplified. It is that which has place, in so far as such being the effects of the alarm produced by the apprehension of continually recurring repetitions of the species of injury in question, the mischief has, from the passive and sensitive faculties of the persons thus threatened, extended itself to their active faculties, compelling them, as it were, to render themselves, by their own inactivity, instruments of their own ruin.

In that modification of delinquency and injury which is composed of acts of the predatory class, may be seen the clearest and strongest exemplification of this case.

In Asia and Africa, many are the instances in which spots, which though situated within the demesne of regular governments, and at one time kept accordingly in regular cultivation, have successively been to such a degree infested by the predatory incursions of neighbouring tribes, as to have at length been abandoned by their inhabitants, and left in a state of perfect desolation.

Under any European government instances are scarcely to be met with where, in its progress over the community, the evil produced by private delinquency has made so great an advance as to have arrived at this third stage.

Unfortunately, of evil, which having been the result of the misconduct of the rulers themselves, has extended itself so far as to make its appearance in the character of an evil of the third order, examples are by no means rare.

2. In the case of public punishment, *i. e.* of evil purposely produced by the powers of government, to the end that it may operate in the way of punishment, — in the first place comes a portion of the matter of evil. But as among the last effects of an act of delinquency was the operating upon the active faculties of the persons in question, in such sort as to restrain and prevent them from doing that good to themselves and others which otherwise they would have done; so of a lot of evil produced for the purpose of punishment, the earliest effect is of the nature of good, consisting in this, viz. that they who otherwise would, in the shape in question, have done evil to others, are, by the experience or apprehension of the like evil to themselves, restrained, and so thus prevented from doing it.

3. In the case of public reward — *i. e.* of a portion of the matter of good administered at the expense of government, and thence at the expense of the community, to the end that, in the character of matter of reward, it may have the effect of giving birth to public service, which in some shape or other is regarded as more than equivalent in value to the expense in the shape of the matter of reward. In the first place comes the evil necessarily attendant on the coercive measures employed for the extraction of this precious matter. But in the next place comes the good — *i. e.* the pleasures—which whether the application made of the matter be well or ill contrived, is necessarily produced on the receipt of this precious matter; — in which good we see the good which is of the first order, and applies itself to the passive, and to no other than the passive, faculties of the persons to which it applies itself.

Effects of the first order, evil as above: effect of the second order, good, — and that of the first order as above, pleasure enjoyed by the individual by whom the matter of reward in question has actually been received. Effect of the third order, good, and good of the second order,—pleasure expectation, with the consequent proportionable alacrity in the breasts of all those to whom, from observation made of the cause for which, and manner in which, the matter of reward has been bestowed in this instance, it may happen to deduce an expectation of obtaining for themselves from the like service, similar reward in return for similar service. Effect of the fourth order, good, and that good of the third order, active service performed accordingly: and here, in the last stage, we see the application of the precious matter, invigorating and exciting the active faculty, as in the case of delinquency at the same stage we see the active faculty debilitated, and perhaps paralyzed and struck motionless.

Extensive and important are the practical inferences that present themselves as following from this theory.

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In the case of evil, the evil of the first order is next to nothing in comparison with the evil of the second order—not to speak of a stage of evil so unfrequently exemplified as the evil of the third order.

Of the four classes into which the whole mass of delinquency may be divided, — viz. offences against persons individually assignable — offences against a man's own welfare — offences prejudicial to a particular class of persons — offences prejudicial to the whole community at large, — in the second of these classes, viz. offences against a man's self, the principal element of the evil of the second order, viz. the alarm, is altogether wanting.

VII. Springs of actions, — appetites — desires — motives — interests.

Explanation of these psychical fictitious entities of the pathematic class, by that connexion which is common to them with pleasures and pains in the several shapes of which they are susceptible.*

VIII. Sanctions or sources of obligation and inducement, five in number, viz. —

1. The physical sanction.
2. The moral or popular sanction.
3. The political, including the legal sanction.
4. The religious sanction.
5. The sanction of sympathy, limited in its application to a particular class of cases.

In so far as the word *sanction* is employed, what is thereby brought to view is, not the species of pleasure or pain by the prospect of which the influence on human will is exercised, and the effect produced, but only the *source* whence the pleasure and pain in question is expected to flow.

1. In the case of the physical sanction, the source or root of the pleasure or pain is in the pre-established nature of things, and not in human agency.

Thus, in respect of intoxicating liquors, in respect of the pain resulting from the drinking of them when pursued to excess, the tendency of the force of the physical sanction tends in a certain degree to restrain a man from giving into such excess.†

2. In the case of the moral or popular sanction, the source or root of the pleasure or pain regarded as eventually about to have place, is in the good or ill offices of mankind at large; that is, of such of its members to whom the knowledge of the incident or transaction in question may happen to come — viz. in the degree of estimation in which, on the occasion in question, the agent is regarded as likely to be held — or in other words, in the opinion, good or bad, favourable or unfavourable, likely to be entertained in relation to him: thence in the mental sensations, pleasant or unpleasant, of which the idea of the act is likely to be productive in his mind: — thence in the good or ill *offices;*—in the case of good, commonly expressed likewise by the word *services.*

Popular.—For the employing of the word popular, as the designation of the sort of sanction here in question, what (it may be asked) is the ground or warrant? Answer: In this consideration, viz. that the people at large, without distinction of persons, are the persons at whose hands the good and evil in question are respectively expected: the good and evil, — viz. of the good, whatsoever may be the result of the good offices which the people at large, freely and without coercion, may on the consideration in question respectively feel themselves especially disposed to render:—of the evil, whatsoever may be the result of such *evil offices* as the same persons are under, and by this and the several other sanctions left free to render to the persons on whose conduct the force of the sanction here in question is considered as applying itself.

Moral. — For the employing of the word moral on this same occasion, and to this same purpose, what is the ground or warrant? Answer: In this consideration, — viz. that for the performance of such acts, positive and negative together, as though not sanctioned by the political sanction, nor on the occasion in question by all persons considered as sanctioned by the political sanction, and yet at the same time are considered as obligatory, the moral sanction, or the sanction of morality, is the term by which the source of the obligation seems commonly to have been designated.

3. In the case of the political, including the legal sanction, the source or root of the pleasure or pain regarded as eventually about to have place, is in the good or ill offices of that portion of mankind in whose hands, in the political state in question, the powers of government are lodged, and who in consequence have at their disposal an unlimited proportion of the matter of good and of the matter of evil, capable of being employed and applied at pleasure in the character of matter of reward and matter of punishment.

The case, and the only case, in which the adjunct *legal* is applicable to the sort of sanction here in question, is that in which, under the authority of the legislative department of government, the matter of good and evil is disposed of, and applied in the express and declared view of operating in the character of

* See *Table of Springs of Action*, Vol. I. pp. 193–219.

† In respect of the pleasure produced by the drinking of the liquors in question, when not carried to any such degree as to produce sensible ill effects, may it not be said, and without impropriety, that in the case of a person to whom such potations are productive of agreeable sensations, it is by the force of the physical sensation that he is invited or excited to such acts?

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matter of reward, or matter of punishment, thereby giving or endeavouring to give direction to those to whom application is actually made of the matter itself, or the prospect and expectation of it.

In this department, it is principally to the avowed purpose of giving to men's conduct in the character of subjects, that direction by which they are made to abstain from such acts, principally positive acts, as are treated on the footing of offences, principally in consideration of the mischief of which they are regarded as productive, or threatening to be productive, that the matter of good and evil is applied, and that accordingly principally in the shape of matter of punishment. But in so far as, in the shape of matter of wealth or any other shape, it is applied; although it be not declaredly in the character of reward or in that of punishment, that application is made of it by persons invested with the powers belonging to the administrative department of government, the matter of good and evil operates not less in this than in the other case;—the matter of good and evil is capable of being made to operate in the character of a sanction, in such sort as to give to men's conduct, in the character of subjects, such direction as, whether in the pursuit of those public ends which in that department of government are avowedly the objects of pursuit, or in pursuit of the personal or other private ends of those in whose hands the public powers in question are reposed.

In this case, in so far as the ends in pursuit of which the matter of good and evil is administered are of the personal or other private and therefore sinister ends just mentioned, it is in the character of matter of corruption that it operates:—but how ill soever the design and effect is, with which it is thus made to operate towards the giving to men's conduct the direction so endeavoured to be given, the effect of which it is productive is not the less the same, as where, being in the character and under the name of a sanction, it is avowedly employed to the giving to men's conduct the sort of direction above mentioned as endeavoured to be given to it when employed in the name and character of matter of punishment or matter of reward.

By the Treasury Board, under the direction of the First Commissioner, suppose an office given or promised to be given to a Member of Parliament, for the purpose of engaging him on all occasions to give his vote according to the direction prescribed by that member of the administration department: — the sanction, by the force of which the direction in question is thus given to the conduct of the functionary in question, cannot with propriety be termed the legal sanction; but to its being termed the political sanction, no objection seems capable of being made.

4. In the case of the religious sanction, the source or root of the pleasure or pain regarded as eventually about to have place, is in the good or ill offices of an almighty, but to man an invisible being: in whichsoever state of existence, whether the present or the future, considered as about to be rendered.

5. *Lastly*, In the case of the sanction of sympathy, or sympathetic sanction, the occasion on which any pleasure or pain appertaining to this sanction is capable of being experienced is, when of some act which the person in question has it in contemplation to exercise, a consequence about to result is pleasure or pain, in any shape, as the case may be, in the breast of some other person in whose well-being the person in question experiences an interest, produced by the force of the sympathetic affection. In this case, in the joint proportion to the force with which this affection operates in his breast, added to the magnitude of the pleasure or pain which is regarded by him as about to result to the object of this his affection, in the event of his exercising the act in question, is the force with which, by this sanction, he is urged to exercise, or to forbear to exercise, such act — to exercise it in so far as it appears likely to be productive of pleasure, or an equivalent good; to forbear exercising it in so far as it appears likely to be productive of pain, or an equivalent evil, appears likely to be the result of it.

In this case, the pleasure or pain, by the idea and contemplation of which human conduct is operated upon and liable to be determined, being the immediate result of the conduct of the person in question, produced, and regarded as about to be eventually produced, without the intervention of any exterior will—of any will exterior to his own—it follows that, when considered in this point of view, this sanction falls within the description of the physical sanction. But between these two cases the difference seemed considerable enough to indicate the propriety of representing the conduct in question as being in the two cases the result of two different sanctions: — so great is the difference between self-regarding and sympathetic affection — between the case where the pleasure or pain by the consideration of which a man's conduct is determined is his own purely and immediately, and the case when it is his own no otherwise than in consequence of a correspondent pleasure or pain being regarded as experienced or about to be experienced, by another person — between the case where the pleasure or the pain is his own purely and directly, and the case in which it comes to him no otherwise than as it were by reflection, and through the medium of a portion of pleasure or pain of a different nature, regarded as having place in another breast.

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Taken in the aggregate, the four preceding sanctions may, with reference and in contradistinction to this sanction — to the sympathetic sanction — be termed purely self-regarding ones.

The influence of the sympathetic sanction — *i. e.* of the pleasures and pains belonging to this sanction — corresponds to, and is coextensive with, that of all the purely self-regarding ones. A person dear to me, presents himself to my conception as suffering or eventually about to be made to suffer pain: by the love I bear to him, I am impelled to do what may be in my power towards relieving or exempting him from it. That pain may be a pain inflicted by the power of any one of those four sanctions, or an evil composed of so many distinguishable pains inflicted by the powers of every one of them.

Take, for example, the habit of drunkenness. By that habit it may happen to the same man to be subjected to bodily suffering in a great variety of forms, all comprehended under the general denomination of ill health: — here we have the pain of the physical sanction. It may happen to him to be exposed to public shame, and by that means to sink in the esteem of his friends and his acquaintances:—here we have the pain of the popular or moral sanction. It may happen to him to lose some office, more or less lucrative or honourable, of which he is in possession or expectation: — here we have the pain of the political sanction. Either for the scandal of the exposure, or for some injuries done to individuals, or other excesses committed in some paroxysms produced by intoxication, it may happen to him to be subjected to punishment at the hands of the law: — here we have the pain of the legal branch of the political sanction. It may happen to him to be tormented with apprehension of punishment about to be administered to him by the hands of the Almighty in a life to come: — here we have the pain of the religious sanction.

That, in comparison with the several other moral forces to which the name of sanction has here been given, the force here termed the sympathetic sanction is in general very weak, is not to be denied: but, for the omitting it from the list of sanctions, this weakness, were it greater than it is, would not afford any sufficient warrant. Of itself, *i. e.* without assistance from any of the other sanctions, it is every now and then seen productive of very considerable effects. It is to the force of this sanction that the principle of utility (understand of general utility) stands indebted for whatsoever reception it meets with, other than that which it may happen to any other articles in the list of sanctions to be instrumental in procuring for it. Under the guidance of the principle of utility it operates in alliance with the several other sanctions: under the same guidance it may not unfrequently be seen operating in opposition to them, and checking them in those sinister courses of maleficence into which, in opposition to the dictates of general utility, they are all of them more or less apt to be led by the political sanction, whether under its own guidance, or under the guidance of the religious sanction. Equally steady and efficient in its action with any of those self-regarding sanctions it cannot be said to be; but a force, howsoever weak and unsteady, is still not the less a force: and were it not for the operation of this sanction, no small portion of the good, physical and moral, which has place in human affairs, would be an effect without a cause.

In exact proportion to the efficiency of this principle would be the error committed by him who, on the occasion of any calculation made of the result of the moral forces on the sum or balance of which an effect depends, the production or prevention of which had become the object of human endeavour, should leave out of his calculation the operation of this cause.

Origin of the Theory of the Five Sanctions.

In speaking of law, viz. the internal law of any political state *(internal*, I say, in contradistinction to *international)*, Blackstone, by whom it is, by an appellative not very appropriate, termed *municipal*, after Puffendorf and others, divides it into four parts, one of which he terms the sanction, or sanctionative part. The sanction or sanctions of law is accordingly an expression of not untrequent occurrence. So likewise the sanction or sanctions of religion: and accordingly this or that portion is spoken of as being confirmed by, or having received, the sanction of law or the sanction of religion. But as to that which, as above, is here termed the popular or moral sanction, I have no recollection, general or particular, of ever having seen it employed. To the sanction termed *political*, and employed in contradistinction to the legal sanction, viz. in so far as the whole of anything stands distinguished from a part of it, the same observation may also be extended.

In fine, so may it to the physical and the sympathetic: for, in relation to all these several sources of action, two things have, as above, and it is hoped not unsatisfactorily, been shown, — viz. that they are each of them distinct from all the rest, and that they are all of them what they are here termed sources of action; viz. motives, or sets of motives, derived in each of these five instances from so many different sources: to which may be added, that each of them is, according to circumstances, susceptible of such a degree of force as may prove sufficient, perhaps even the

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weakest of them, to enable it to overpower any one or more of the rest, *i. e.* to give determination to human conduct, even while all those others are operating in opposition to it.*

IX. Conditions requisite for the accomplishment of any object, in so far as depends upon human means: —

Qualifications, both of them necessary, and together sufficient, on the part of the agent or agents in question, for the due accomplishment of any object whatsoever, and in particular for the due discharge of every political obligation, and thence for the due execution of every public trust, — appropriate *will*, and appropriate *power*.

Power is either power *ab extra*, or power *ab intra*. Power *ab extra* is correspondent to, and its efficiency proportionate to the extent and degree of compliance on the part of those over whom it is considered as being said to be exercised. Power *ab intra* will be in proportion to the degree of relative or appropriate knowledge, and the degree of appropriate active talent, on the part of him by whom the exercise of it comes to be made.

In so far as operation or co-operation towards the accomplishment of the object is considered as matter of duty or moral obligation, to possess the appropriate will or inclination is to possess the virtue of *probity* — relative probity: and when put in contrast and contradistinction with this requisite state of the will, appropriate knowledge has been termed intelligence.

Wisdom, probity, and power, — of these three, on attending Blackstone's lectures, and afterwards reading them when in print, under the name of Commentaries on the Laws of England, I observed the concurrent existence laid down by him as conditions necessary to, and at the same time sufficient to insure, in any given political community, the existence of good government.

With reference to government in the highest stations,—and in these alone, are these conditions and qualifications brought to view by Blackstone, — neither by him is anything done to show the relation borne to each other, as above, by these associated fictitious entities, or towards satisfying the reader that the division thus exhibited is of the *exhaustive* kind.

With the help of such amendments as seemed requisite, the enumeration and division appeared to me capable of being, with equal propriety and utility, applied in the political line to all subordinate stations; in the next place, to the accomplishment of any object whatsoever in the ascending or more comprehensive line.

* The list of sanctions was afterwards enlarged by Bentham, see Note. *Introduction to Morals and Legislation*, Vol. I. p. 14.

X. Obligation and Right: —

Explanation of these moral, including political, fictitious entities, and of their relation to one another, by showing how they are constituted by the expectation of eventual good and evil, *i. e.* of pleasures and pains, or both, as the case may be, to be administered by the force of one or more of the five sanctions, as above; viz. the physical, the popular, or moral; the political, including the legal; the religious, and the sympathetic.

Of either the word obligation or the word right, if regarded as flowing from any other source, the sound is mere sound, without import or notion by which real existence in any shape is attributed to the things thus signified, or no better than an effusion of *ipse dixitism*.

XI. Proper Ends of the distributive branch of law: —

Ends or purposes, the fulfilment or accomplishment of which this branch of law ought to have for its principal objects, — *security*, *subsistence*, *abundance*, and *equality*.

In the mention made of security, a tacit but necessary reference is made to the several classes of injuries against individuals other than the man himself, to which every individual stands exposed. Security is security against mischief — against evil from whatever quarter it may happen to it to come, and against whatsoever of a man's possessions, or vulnerable part of a man's frame, it may happen to it to be directed or to strike.

On this occasion the great difficulty consists in tracing the lines of distinction by which these several factitious entities are separated from each other. Subsistence and abundance have one and the same matter — the matter of wealth: of security, that same matter is itself a main instrument and means whereby all other instruments of security may be obtained.

In the case both of subsistence and abundance, over the relation they bear to security there is some obscurity. Security has several branches — as many branches as there are distinguishable objects exposed to deterioration or destruction; and in the list of these objects are comprised that matter, the matter of wealth, which is common to subsistence and abundance — security against mischief to human life, person, reputation, property (*i. e.* the matter of wealth, considered as lodged in the hands of the individuals, or assemblages of individuals in question) and condition in life. Security is again divisible into as many branches as there are different sorts of offences, or pernicious acts, by which, *pro tanto*, security is destroyed or endangered.

All these objects are, with relation to each other, so many antagonizing forces. In some instances, by the measure by which one is attained, so are one or more of the others:

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in other instances, one cannot be attained, or endeavoured to be attained, but by the relinquishment, or, *pro tanto*, the sacrifice of one or more of the others.

Equality, in particular, finds in each of the other three a rival and an antagonist — and in security and subsistence, rivals and antagonists, of which the claims are of a superior order, and to which, on pain of universal destruction, in which itself will be involved, it must be obliged to yield. In a word, it is not equality itself, but only a tendency towards equality, after all the others are provided for, that, on the part of the ruling and other members of the community, is the proper object of endeavour.

At the same time, in proportion as the subject is inquired into, it will be found that in all good systems of law, and even in all systems, the very worst not excepted, more or less regard is paid to equality; that in the aggregate of the body of laws in every state, all these others are constantly aimed at, are the objects of constant care, solicitude, and active operation; and that in fact the laws have no other objects or ends in view, but which, short as it is, are comprehended in this list; and that in all bodies of law, the great and constant difficulty is on each occasion, in so far as the competition has place, to decide to which of them the greatest portion of favour is due,—for which, in preference to the rest, provision is to be made.

These things considered, of the ends or objects of the distributive branch of the law, how with propriety could any list, more or less ample, differently composed, have been given?

XII. Formation of an uniform and mutually correspondent set of terms, for the several modifications of which the creation, extinction, and transfer of subjects of possession, whether considered as sources of benefit or as sources of burthen, are susceptible: — and thence of a mutually connected and correspondent cluster of offences, consisting of the several possible modes of dealing as above with such subjects of possession, in the case in which they are considered as wrongful, and as such prohibited by statute law, or considered and treated as prohibited by judiciary *alias* judge-made law.

1. *Collation;* 2. *Ablation.* In the case, and at the point of time, at which the subject-matter is for the first time brought into existence, collation has place without ablation: if it be already in existence, then collation and ablation have place together, and of their union *translation* is the result: in so far as ablation has place without collation, then not translation, but *extinction*, is the result.

Performed in favour of the collator himself, collation is *self-collation:*—if regarded as wrongful, it is *wrongful* self-collation; or in one word, *usurpation* is the name by which it has been, and at any time may be, designated.

Performed by the ablator himself, ablation is *abdication:* — if by the laws regarded or treated as wrongful, — wrongful abdication is accordingly the name by which it may be designated.

XIII. *Division of offences,* — by which is meant all such acts as on the score of their reputed mischievousness are fit or have been or are likely to be regarded as fit to be, — viz. by the application of punishment—converted into offences,—from the consideration of the person or persons, with reference to whom, in the first instance, they are regarded as being or likely to be mischievous, into offences against others — *i. e.* regarded as prejudicial to others, and offences against a man's self — *i. e.* regarded as prejudicial to a man's self.

Division of offences regarded as prejudicial to others, into offences against assignable individuals, *alias* private offences — offences against the unassignable individuals belonging to this or that class, or this or that local district, *alias* semi-public offences—and offences against the unassignable individuals of whom is composed the population of the whole political state.

From the distinction thus brought to view have been deduced diverse conclusions of no inconsiderable importance with reference to practice: — offences so far as the mischief, if any, which they have for their result is confined to the author of the offence, are no fit objects of controul by punishment and penal laws.

Of the offence which in this case is regarded as mischievous — the mischief, if any, being by the supposition confined to the offender himself — the consequence is, that no sooner is it felt,—viz. by him the offender,— than by the whole amount of it, it operates upon him in the character of so much punishment.

Division of offences into *positive* and *negative;* or rather observation made, that in the nature of the case, for every offence committed by a positive act, there is room for a correspondent offence committed by a negative act. The case of a positive offence, that where the mischief of the offence, as above, has for its cause a positive act — an act of *commission:* the case of a negative offence, that in which the mischief has for its cause a negative act — an act of *omission:* an act which consists in a man's omitting to do that which it was in his power to do towards the prevention of a mischief, which for want of such positive and preventive act on his part, either actually did take place, or at any rate would have taken place, but for some pre-

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ventive obstacle, in the application of which he had not any share.

The principle of division here brought to view, extends itself over the whole field of delinquency — be the positive act what it may — the opposite negative act is alike conceivable — is alike capable of being exemplified. If in the case of the positive act any mischief seem to flow, the correspondent negative act can never be altogether unproductive of the like consequence.

As to the difference between the mischief of the one and of the other, it consists altogether of the mischief of the second order; for as to the mischief of the first order, if it have place in both cases, it is exactly the same in both cases. But in the case of the negative offence, the mischief of the second order — the alarm and the danger—is next to nothing. On the part of the offender, all endeavours to prevent the mischief, which in the instance in question was actually produced, were wanting. True; but it follows not that he will at any time employ any exertions in the endeavour to produce a similar mischief.

In respect of punishment, cases there are in which, under the laws perhaps of all civilized nations, the negative act is put exactly upon the same footing as the positive act. In these cases, for example, viz. when one person having another in his power, keeps him without sustenance till he dies — by a mother or nurse, a new-born child — a jailor, one or more of his prisoners. In respect of punishment, the negative course of conduct, of which in these cases loss of life is the result, is commonly put upon a footing little if any thing different from that which has place where the mischief has for its cause a positive act. So in case of a design hostile to the person or power of the sovereign, or this or that member of the sovereignty in a state, the negative offence, which in the case of a person by whom the existence of the design is known, is committed by omission to give information of it to the competent authorities, is commonly punished, not perhaps with exactly the same punishment as that which is appointed for him by whom an active part is taken in that same design, but yet with some other punishment which does not fall much short of it.

Wheresoever the obligation, considered as imposed by the law, is of a positive nature the only sort of offence which the nature of the case renders possible is of the *negative kind:* and in this whole class of cases, the concomitancy of the two forms of delinquency fails. The sort of offence commissible by non-payment of taxes may serve by way of example. But in every other case, little has been the notice as yet taken of it.

XIV. Ends of Political Economy: —

These are the same as those of the distributive branch of law. Wherein, then, lies the difference? Answer: In so far as political economy is the object, so it is, that to two of those objects, viz. subsistence and abundance, a more particular and direct attention is paid, than either to security or to equality.

By distributive law, is declared what on as many occasions as shall happen to have been taken into view, shall be each man's own. By political economy, is endeavoured to be ascertained how far, and for what particular purposes, chiefly for the general purposes of abundance and subsistence (*i. e.* security for subsistence), the use which otherwise under distributive law each man might make of his own, shall, for the more effectual fulfilment of these several ends, be directed and restricted.

XV. Limits applied to the quantity and productions of Industry, by the quantity of the necessary instruments of production which at the place in question—at the time in question, are in existence.

These instruments are —

1. The aggregate mass of existing capital.
2. The aggregate mass of capacity for labour.

That no end can be successfully pursued to any point beyond the productive power of the aggregate mass of *means* of all sorts necessary to the pursuit and attainment of it, is a self-evident, not to say an identical proposition: any proposition inconsistent with it would be a contradiction in terms.

Yet from this theoretical aphorism, follow divers practical inferences, which though they will scarcely be found to admit of denial, have found great difficulty in obtaining assent.*

* The last sheet of the MSS. from which the foregoing sketches are taken, is dated 21st Oct. 1814, Ford Abbey: at the foot of this sheet there is a pencil mark *Go on*, but no traces have been found of the subject having been resumed

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